No. 91-983

FILED
DEC 17 1991
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1991

ALLSTATE INSURANCE COMPANY,
an Illinois Corporation,

Petitioner,

v.

SAMUEL F. FORTUNATO,
Commissioner of Insurance of
The State of New Jersey,

Respondent.

Petition For A Writ Of Certiorari To The Appellate Division Of The Superior Court Of The State Of New Jersey

APPENDIX, VOLUME I

DUANE C. QUAINI
(Counsel of Record)
WILLIAM T. BARKER
SONNENSCHEIN NATH & ROSENTHAL
8000 Sears Tower
Chicago, IL 60606
(312) 876-8000

Of Counsel:

RICHARD A. EPSTEIN
1111 East 60th Street
Chicago, IL 60637
(312) 702-9563

WILLIAM J. BRENNAN, III
SUZANNE M. MCSORLEY
SMITH, STRATTON, WISE,
HEHER & BRENNAN
600 College Road East
Princeton, NJ 08540
(609) 924-6000

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS OF APPENDIX

Appendix 1. . . . . A-1

Order No. A 91-111 of The Commissioner of The State of New Jersey Department of Insurance Regarding Depopulation Exposures to be Assigned to Allstate Insurance Company.

Appendix 2. . . . . A-40

Decision in *In Re Matter of Assignment of Exposures to Aetna Casualty & Surety Co., Allstate Insurance Co. and Colonial Penn Insurance Co.*, 248 N.J. Super. 367, 591 A.2d 631 (App. Div. 1991).

Appendix 3. . . . . A-65

New Jersey Supreme Court Denial of Certification as to Depopulation Order at Issue Herein (N.J. Sept. 18, 1991).

Appendix 4. . . . . A-67

Allstate Insurance Company's Petition for Certification to New Jersey Supreme Court as to Depopulation Order at Issue Herein.

Appendix 5. . . . . A-94

Allstate Insurance Company's Notice of Appeal to New Jersey Supreme Court as to Depopulation Order at Issue Herein.

Appendix 6. . . . . A-98

Constitutional Provisions Involved.

Appendix 7. . . . . A-99

Statutory Provisions Involved.

TABLE OF CONTENTS OF APPENDIX – Continued

Appendix 8. . . . . A-184

Allstate Insurance Company's Letter Brief Supporting Request for Stay of the Commissioner's Depopulation Order.

Appendix 9. . . . . A-206

Notice of Appeal by Allstate Insurance Company of Commissioner's Depopulation Order.

Appendix 10 . . . . . A-213

Portions of Opening Brief of Allstate Insurance Company Supporting Appeal of Depopulation Order.

Appendix 11 . . . . . A-252

Portions of Reply Brief of Allstate Insurance Company Supporting Appeal of Depopulation Order.

Appendix 12 . . . . . A-269

Order No. A91-212 of the Commissioner of the State of New Jersey Department of Insurance Regarding MTF Rates.

Appendix 13 . . . . . A-291

In Re Commissioner of the State of New Jersey Department of Insurance's Order Regarding MTF Rates (N.J. Super. Court App. Div. November 19, 1991) (Appellate Division Decision Regarding MTF Rates).

TABLE OF CONTENTS OF APPENDIX – Continued

Appendix 14 ..... A-312

Deputy Commissioner's December 4, 1991 Supplemental MTF Rate Filing.

Appendix 15 ..... A-338

New Jersey Insurer Withdrawal Regulations.

Appendix 16 ..... A-359

Order No. A91-279 of the Commissioner of the State of New Jersey Department of Insurance Regarding Allstate Insurance Company's Request for Interim Rate Relief.

APPENDIX 1

ORDER NO. A 91-111

STATE OF NEW JERSEY
DEPARTMENT OF INSURANCE

IN THE MATTER OF THE ASSIGNMENT OF EXPOSURES TO Allstate Insurance Company, A MEMBER COMPANY OF THE NEW JERSEY AUTOMOBILE FULL INSURANCE UNDERWRITING ASSOCIATION AND THE MARKET TRANSITION FACILITY OF NEW JERSEY, PURSUANT TO THE VOLUNTARY MARKET PLACEMENT PROGRAM	)	ORDER

This matter having been opened by the Commissioner of Insurance of the State of New Jersey ("Commissioner") pursuant to the authority of N.J.S.A. 17:1C-1 *et seq.*, *N.J.S.A.* 17:30E-1 *et. seq.*, the Fair Automobile Insurance Reform Act of 1990 ("FAIR Act") (*P.L.* 1990, *c.* 8) (*N.J.S.A.* 17:33B-1 *et seq.*), and all powers expressed or implied therein; and

IT APPEARING that *N.J.S.A.* 17:30E-14(a), as amended by *P.L.* 1988, *c.* 119, requires the Commissioner to establish procedures in the Plan of Operation ("Plan") of the New Jersey Automobile Full Insurance Underwriting Association ("Association") to govern the voluntary writings of applicants and Association insureds without utilization of the Association; and

IT FURTHER APPEARING that the enactment of the FAIR Act further amends *N.J.S.A.* 17:30E-14 and requires

the Commissioner to make additional amendments to the Association's Plan; and

IT FURTHER APPEARING that the Commissioner certified amendments to the Association's Plan, entitled the Voluntary Market Placement Program ("Program") (Operating Principles, Part I, Section 13), on April 28, 1989 and on November 14, 1990 and proposed additional amendments to the Program on December 31, 1990; and

IT FURTHER APPEARING that *N.J.S.A.* 17:30E-14 (c), as amended by *P.L.* 1988, *c.* 119, and the procedures set forth in the Program, require the Commissioner to direct the Association to assign to member companies the balance of exposures needed to meet the applicable quota in the event that any quota established by the Commissioner was not met by the end of the applicable quota period; and

IT FURTHER APPEARING that the member companies were notified by letter dated May 15, 1990 of their apportionment share for the depopulation quota period ending September 30, 1990; and

IT FURTHER APPEARING that the depopulation quota established by the Commissioner for the period ending September 30, 1990 was not met according to the quarterly reports filed by the member companies with the Department of Insurance listing in force exposures by territory as of September 30, 1990; and

IT FURTHER APPEARING that Allstate Insurance Company ("Allstate") failed to meet its assigned apportionment share by 32,687 exposures as of September 30, 1990; and

IT FURTHER APPEARING that, pursuant to *N.J.S.A.* 17:33B-1 *et seq.*, and amendments to *N.J.S.A.* 17:30E-1 *et seq.*, the Association has been succeeded in function and responsibility by the Market Transition Facility of New Jersey ("MTF").

THEREFORE, IT IS on this 24th day of January, 1991,

ORDERED that mandatory assignment of exposures from Association or MTF policies expiring on or after April 1, 1991 be effective upon approval by the Board of Directors of the Association of the amendments to the Association's Voluntary Market Placement Program proposed on December 31, 1990 or upon certification of these proposed amendments on January 31, 1991 pursuant to *N.J.S.A.* 17:30E-6, whichever occurs first; and

IT IS FURTHER ORDERED that the Association and MTF assign 32,687 exposures to Allstate in accordance with the provisions of the Mandatory Depopulation Assignment Plan attached hereto as Exhibit 1; and

IT IS FURTHER ORDERED that Allstate shall comply with the provisions of the Mandatory Depopulation Assignment Plan; and

IT IS FURTHER ORDERED that Allstate shall make offers of automobile insurance coverage and/or issue automobile insurance policies to every Association or MTF policyholder assigned to it pursuant to the Mandatory Depopulation Assignment Plan; and

IT IS FURTHER ORDERED that Allstate shall offer the same or equivalent automobile insurance coverage to every assigned Association or MTF policyholder where Allstate has rates and rules for such coverage filed and

approved by the Department. Where Allstate does not have rates and rules filed and approved by the Department for the same or equivalent coverage presently afforded the assigned policyholder under the Association or MTF policy, Allstate shall offer to the assigned Association or MTF policyholder the next broadest coverage for which Allstate has rates and rules filed and approved by the Department. Provided, however, that in no event shall Allstate offer less coverage to the assigned Association or MTF policyholder than the coverage afforded to the assigned policyholder under the Association or MTF automobile insurance policy; and

IT IS FURTHER ORDERED that Allstate shall, upon acceptance of the automobile insurance coverage by the Association or MTF policyholder, write and service the assigned exposure(s) for a minimum period of one (1) year from the expiration date of the assigned Association or MTF policy. Except for nonpayment of premium, Allstate shall not be permitted to decline coverage or cancel, nonrenew or otherwise terminate any assigned exposure during this one (1) year period; and

IT IS FURTHER ORDERED that Allstate shall be precluded from requiring the assigned Association or MTF policyholder to obtain or maintain membership or qualification for membership in any club, group or organization as a condition for providing automobile insurance coverage, including the payment of dues, membership fees, or other charges;

IT IS FURTHER ORDERED that Allstate shall be fined $2,000.00 for every offer of automobile insurance coverage or policy of automobile insurance which Allstate fails to make or issue at least thirty (30) days prior

to the expiration date of the assigned Association or MTF policy. Pursuant to *N.J.S.A.* 17:30E-17(a), all fines shall be collected and enforced in accordance with *N.J.S.A.* 2A:58-1 *et seq.* (the "Penalty Enforcement Law"); and

IT IS FURTHER ORDERED that Allstate shall be subject to any other penalty provision of *N.J.S.A.* 17:30E-17, and any other penalties authorized by law, if Allstate fails to comply with the terms of this Order and the provisions of the Mandatory Depopulation Assignment Plan.

_____
Date

/s/ Samuel F. Fortunato
Samuel F. Fortunato
Commissioner

EXHIBIT 1

MANDATORY DEPOPULATION ASSIGNMENT PLAN

The following procedures shall govern the assignment of exposures by the New Jersey Automobile Full Insurance Underwriting Association ("Association") and the Market Transition Facility of New Jersey ("MTF") to every member company which failed to write its apportionment share established by the Commissioner of Insurance of the State of New Jersey ("Commissioner") for the depopulation quota period which ended September 30, 1990:

1. Assignment of private passenger automobile non-fleet exposures ("exposures") shall be made from those rating territories where the voluntary market share is less than the aggregate voluntary market quota established by the Commissioner. Pursuant to *N.J.S.A.* 17:30 E-14(b)(2) and the aggregate voluntary market quota

established by the Commissioner, the member companies were to have voluntarily written 68 percent of the exposures in the total private passenger automobile insurance market in New Jersey by September 30, 1990. Accordingly, based on the quarterly reports filed by the member companies with the New Jersey Department of Insurance ("Department") listing in force exposures as of September 30, 1990, any rating territory where the voluntary market share is less than 68 percent of the total market (for that territory) shall be included in the Mandatory Depopulation Assignment Plan as a territory subject to assignments.

2. The quarterly reports filed by member companies listing in force exposures as of September 30, 1990 indicated that those member companies that failed to write their apportionment shares, in the aggregate, fell short by 222,977 exposures. The assignment of exposures to these member companies shall be made from the territories subject to assignments in the percentages indicated below. The assignment percentages were determined by:

a. assigning a sufficient number of exposures from the rating territory which had the smallest voluntary market share until the voluntary market share of this rating territory equaled the voluntary market share of the rating territory which had the next smallest voluntary market share; then

b. assigning a sufficient number of exposures from these two rating territories until their voluntary market share equaled the voluntary market share of the rating territory which had the third smallest voluntary market share; then

c. repeating step (b) above with additional rating territories until 222,977 exposures were assigned from the territories subject to assignments. Provided, however, that the adjusted voluntary market share of any territory subject to assignments shall not exceed 68 percent.

Rating Territory No.	Brief Territory Description	Assignment Percentages
01	Jersey City	19.37%
03	Paterson	14.28%
02	Newark	12.62%
04	Elizabeth	12.09%
22	Newark Semi-Suburban	06.21%
38	E. Orange/Orange	05.51%
11	S. Bergen County	05.12%
07	Camden	04.27%
08	Perth Amboy	03.48%
27	Atlantic County	03.29%
23	Hudson County	03.03%
40	New Brunswick	02.60%
13	Camden County (Balance)	02.48%
05	Bayonne	01.68%
14	Gloucester County	01.58%
19	Atlantic City	01.01%
16	Long Branch	00.81%
06	Trenton	00.57%

3. The number of exposures assigned to each member company shall be increased by an acceptance factor of 25 percent. It is the expectation of the Department that not every offer of coverage made by a member company to its assigned policyholders will be accepted. This expectation is based on the dynamic aspect of the New Jersey automobile insurance market (i.e. Association or MTF policyholders independently seeking coverage with a

voluntary insurer, competition among member companies to write additional new business in order to meet future depopulation quotas, and Association or MTF policyholders leaving New Jersey).

For the purposes of the Mandatory Depopulation Assignment Plan, offer of coverage means making an offer of automobile insurance coverage at least 30 days prior to the expiration date of the assigned Association or MTF automobile insurance policy (for those member companies that make offers of coverage to applicants prior to the issuance of the automobile insurance policy) or issuing a policy of automobile insurance at least 30 days prior to the expiration date of the assigned Association or MTF automobile insurance policy (for those member companies that do not make offers of coverage to applicants).

4. Exposures shall be assigned to member companies from the book(s) of business of Association or MTF producers who shall be randomly selected from territories subject to assignments based on the size of the producer's book of business and the shortfall of the member company. Selection of producers shall be made by the Department in accordance with item 18 below. For purposes of the Mandatory Depopulation Assignment Plan, every exposure insured by the Association or MTF is eligible for assignment.

5. For purposes of this Mandatory Depopulation Assignment Plan, it shall be deemed that the assigned exposures are located in the rating territory of the principal business address of the selected producer, regardless of the rating territory where the exposures actually are located.

6. a. The member company shall make offers of coverage to every assigned Association or MTF policyholder at least 30 days prior to the expiration date of the assigned Association or MTF policy (i.e. upon renewal of the Association or MTF policy). The offer of coverage shall include, for each assigned exposure, the coverages, limits, options and deductibles transferred to the member company under item 19 below.

b. The member company shall include with the offer of coverage the statements of privacy practices required by law (e.g. Insurance Information Practices Act (*N.J.S.A.* 17:23A-1 *et seq.*); Fair Credit Reporting Act). The member company may include an authorization form to be signed by the assigned Association or MTF policyholder in order to obtain investigative consumer reports. Provided, however, that the failure of the assigned policyholder to return a signed authorization form shall not be grounds for the member company to decline coverage, or cancel, nonrenew or otherwise terminate the policy during the one (1) year period.

c. The member company shall mail a copy of the offer of coverage to the producer of the mandatorily assigned exposures. The copy of the offer of coverage which the member company would provide its own agent if the business had been written voluntarily is sufficient for purposes of this paragraph (see item 16 below).

7. The member company is expressly prohibited from requiring the assigned Association or MTF policyholder to obtain or maintain membership or qualification for membership as a condition for providing

automobile insurance coverage, including, but not limited to, charging dues, membership fees or other charges.

8. The member company must continue to make offers of coverage to all assigned Association or MTF policyholders even when the member company has written sufficient exposures to meet its apportionment share shortfall. Any exposures written in excess of the apportionment share shortfall may be used by the member company toward the fulfillment of its next apportionment share.

9. a. The member company shall include the applicable policyholder assignment notice attached hereto as Exhibits 2 and 3 with every offer of coverage mailed to the assigned Association or MTF policyholder. Exhibit 2 shall be included with offers of coverage for Association policies expiring before October 1, 1991. Exhibit 3 shall be included with offers of coverage for MTF policies expiring on or after October 1, 1991.

b. Except for format changes, any change to the policyholder notice must be approved by the automobile Residual Market Unit of the Department before such notice is mailed to any Association or MTF policyholder (e.g. changes to the required information, adding additional information to the notice, changes in type point-size). For purposes of this paragraph, format change means only the realignment of the required information to accommodate the various data processing systems of the member companies.

c. The type size used in the policyholder notices shall be at least 10-point. The type style used in the policyholder notices shall be the same type style used by

the member company in the Buyer's Guide (*N.J.A.C.* 11:3-15.1 *et seq.*). The size of the paper shall be eight and one-half inches by eleven inches. The member company may print the required notice on both sides of the paper.

10. It is the responsibility of the member company to be able, upon request, to demonstrate to the satisfaction of the Department, Association or MTF that an offer of coverage, including the policyholder assignment notice, was mailed to the assigned Association or MTF policyholder.

11. The member company shall offer the same or equivalent automobile insurance coverage, which was afforded under the Association or MTF policy, to every assigned Association or MTF policyholder where the member company has rates and rules for such coverage filed and approved by the Department. Where the member company does not have rates and rules filed and approved by the Department for the same or equivalent coverage presently afforded the assigned policyholder under the Association or MTF policy, the member company shall offer to the assigned Association or MTF policyholder the next broadest coverage for which the member company has rates and rules filed and approved by the Department. The member company is expressly prohibited from offering less coverage to the assigned policyholder than the coverage afforded to such policyholder under the Association or MTF policy.

The following examples are provided for illustration purposes only:

Example 1: The Association or MTF policyholder presently has $25,000/$50,000/$10,000 split

limits of liability coverage. However, the member company that has been assigned this policyholder only writes combined single limit of liability coverage and only has rules and rates filed and approved by the Department for this type coverage. Therefore, the member company must offer the Association or MTF policyholder a combined single limit of liability coverage which is equal to the bodily injury occurrence limit and the property damage occurrence limit added together or the next broadest available coverage (e.g. $75,000, but in no event less than $60,000).

Example 2: The Association or MTF policyholder presently has $25,000/$50,000/$10,000 split limits of liability coverage. The member company that has been assigned this policyholder only writes combined single limit of liability coverage and offers $100,000 combined single limit of liability coverage as the minimum coverage to its voluntary insureds. However, the member company has rates and rules filed and approved by the Department for combined single limit of liability coverage for amounts less than $100,000. Therefore, the member company must offer the Association or MTF policyholder a combined single limit of liability coverage which is equal to the bodily injury occurrence limit and the property damage occurrence limit added together or the next broadest available coverage, but less than $100,000 (e.g. $75,000, but in no event less than $60,000).

Example 3: The Association or MTF policyholder presently has $25,000/$50,000/$10,000 split limits of liability coverage. The member company that has been assigned this policyholder only writes combined single limit of liability coverage and offers $100,000 combined single limit of liability coverage as the minimum

coverage to its voluntary insureds. The member company does not have any rates and rules filed and approved by the Department for amounts of combined single limit of liability coverage less than $100,000. Therefore, the member company must offer the Association or MTF policyholder $100,000 combined single limit of liability coverage.

Example 4: The Association or MTF policyholder presently has $75,000 combined single limits of liability coverage. The member company that has been assigned this policyholder writes both split limits and combined single limit of liability coverage and has rates and rules filed and approved by the Department for both types of coverage. Therefore, the member company must offer the Association or MTF policyholder $75,000 combined single limit of liability coverage and not a split limits policy.

Example 5: The Association or MTF policyholder presently has $100,000 combined single limit of liability coverage. The member company that has been assigned this policyholder writes only split limits of liability coverage and only has rates and rules filed and approved by the Department for this type of coverage. Therefore, the member company must offer the Association or MTF policyholder split limits of liability coverage with a bodily injury per person limit equal to the combined single limit of liability coverage or the next broadest available coverage (e.g. $100,000/$300,000/$50,000). (Note: All conversions of combined single limit of liability coverage should be handled in the same manner, except a $35,000 combined single limits policy. In this

particular case, the member company shall offer $15,000/$30,000/$5,000 split limits of liability coverage.)

12. a. Upon acceptance of the offer of coverage by the Association or MTF policyholder, the member company shall, at a minimum, write and service the assigned exposure(s) for a period of one (1) year from the policy expiration date of the assigned Association or MTF policy, regardless of the member company's customary policy term (e.g. 6 months).

b. For purposes of this paragraph, writing and servicing the assigned exposure shall be given the broadest possible meaning while the policy is in force, including, but not limited to, adjusting claims resulting from accidents, adding or deleting vehicles, adding or deleting drivers and adding, changing or deleting coverages, limits, options or deductibles. The member company shall provide any change properly requested by the assigned policyholder during the mandatory one (1) year assignment period for which the member company has rates and rules filed and approved by the Department. Essentially, the assigned Association or MTF policyholder shall have the same rights during this one (1) year period as if the policy were insured through the Association or MTF.

13. Upon acceptance of the offer of coverage, the member company shall be permitted to charge additional premium in accordance with its rates and rules filed and approved by the Department based on subsequent information supplied to the member company (e.g. undisclosed motor vehicle violations and/or accidents, new

motor vehicle or change in coverage requested by policyholder).

14. a. Included with the offer of coverage or upon acceptance of the offer of coverage by the assigned Association or MTF policyholder, the member company shall provide the assigned Association or MTF policyholder with a Coverage Selection Form and the New Jersey Auto Insurance Buyer's Guide ("Buyer's Guide"). The coverage Selection Form shall be filled in by the member company with the applicable information provided to the member company by Equifax Services, Inc. ("Equifax") in accordance with item 19 below (e.g. policyholder name, coverages, limits, options and deductibles). The member company shall ask the assigned Association or MTF policyholder to sign and return the Coverage Selection Form. The assigned policyholder has the right to elect different coverages, limits, options and deductibles.

b. Where the assigned Association or MTF policyholder has accepted coverage with the member company but has failed to return a signed Coverage Selection Form, the member company shall send a second completed Coverage Selection Form and Buyer's Guide to the assigned policyholder in accordance with the proof of mailing procedures set forth in *N.J.S.A.* 17:29C-10. The second Coverage Selection Form and Buyer's Guide shall be accompanied by the applicable policyholder notice attached hereto as Exhibits 4 and 5. Exhibit 4 shall be utilized for Association policies expiring before October 1, 1991, while Exhibit 5 shall be utilized for MTF policies expiring on or after October 1, 1991. These notices shall inform the policyholder that failure to return a signed Coverage Selection Form to the member company will

result in the tort option and the physical damage deductibles being changed to the statutory defaults (i.e. lawsuit threshold, $500 physical damage deductibles). The policyholder notices shall follow the same requirements set forth under item 9 above (i.e. type size, type style, changes to the notice, paper size). Provided, however, that the failure of the assigned policyholder to return a signed Coverage Selection Form shall not be grounds for the member company to cancel or otherwise terminate the policy.

15. The member company shall comply with all applicable New Jersey statutes and regulations in providing coverage to the assigned Association or MTF policyholder (e.g. mandatory physical damage inspection).

16. In providing coverage to the assigned Association or MTF policyholder, the member company shall issue the policy in accordance with its voluntary business practices to the extent practicable. Provided, however, that the member company shall not be permitted to utilize its voluntary business practices during this one (1) year period where such practices are more restrictive than the standards utilized by the Association or MTF.

For example, the Association and MTF presently permit the policyholder to pay the annual premium in four (4) installment payments. The last payment is due 180 days after the effective date of the policy. A member company cannot use its voluntary installment payment plan if such plan requires the assigned policyholder to pay the annual premium in less than four (4) installments or less than 180 days from the effective date of the policy.

17. Except for nonpayment of premium, the member company shall not be permitted to decline coverage or cancel, nonrenew or otherwise terminate the assigned exposure during this one (1) year period. Upon expiration of this one (1) year period, the member company may cancel or nonrenew the assigned exposure in accordance with New Jersey statutes and regulations in effect at the time of cancellation or nonrenewal.

18. a. Where a member company that is subject to the Mandatory Depopulation Assignment Plan has an existing voluntary relationship with a producer of the Association or MTF who is located in one of the territories subject to assignments identified in item 2 above, the producer's entire Association and/or MTF book of business may be assigned to such member company to the extent necessary to meet the member company's mandatory assignments.

1. Where a producer has a voluntary relationship with two (2) or more member companies that are subject to the Mandatory Depopulation Assignment Plan, the producer shall be deemed to be the producer of the member company having the largest mandatory assignment amount.

b. Where a member company's mandatory assignments for a territory subject to assignment cannot be satisfied from the book(s) of business from producer(s) selected pursuant to paragraph (a) above, the member company shall be assigned the entire Association and/or MTF book of business from producers who do not have

an existing voluntary relationship with any member company and who are located in one of the territories subject to assignments.

c. For purposes of the Mandatory Depopulation Assignment Plan, producers shall be selected from two (2) random lists by territories subject to assignments created by the Department from the results of the Producer Survey dated July 16, 1990. The first list, which shall be used to select producers pursuant to paragraph (a) above, shall contain those producers who have a voluntary market relationship with a member company. The second list, which shall be used to select producers pursuant to paragraph (b) above, shall contain those producers who do not have a voluntary relationship with any member company.

19. Each month for twelve (12) consecutive months after the effective start date of the Mandatory Depopulation Assignment Plan, each member company that is subject to mandatory assignment of exposures shall receive policy information from Equifax approximately 35-40 days prior to the expiration date of the assigned Association or MTF policy. To the extent practicable, each member company shall receive their monthly mandatory assignments by computer tape (cartridge, reel or any media mutually agreed to by Equifax and the member company). Unless the member company and Equifax mutually agree to a different record format, Equifax shall provide the policy information to the member company in the record format set forth in the Exhibit 6 (similar to the record format set forth in the Association's Plan of Operation, Operating Principles, Part II – Servicing Carriers, Exhibit M). Member companies may elect to receive

their mandatory assignments from Equifax by paper printout. Member companies may contract separately with Equifax to have Equifax provide additional information concerning the mandatorily assigned exposures and/or receive the policy information in a different record format than that set forth in Exhibit 6.

For purposes of illustration only, the Mandatory Depopulation Assignment Plan requires member companies to begin offering coverage to assigned exposures no later than March 1, 1991 for Association or MTF policies due to expire on April 1, 1991. Between March 15 and March 20, 1991, Equifax will endeavor to send to the member company either a computer tape or paper printout listing all the assigned Association or MTF policies due to expire during the month of April, 1991.

20. a. All member companies shall be permitted to use MTF rates and rules as authorized by *N.J.S.A.* 17:33B-11(c)(2) and *N.J.S.A.* 17:33B-12 for the exposures mandatorily assigned from the Association or MTF. Where a member company chooses to use MTF rates and rules, the member company shall pay the producers of the mandatorily assigned exposures the same commission paid by the MTF to its producers (MTF presently pays its producers a nine percent annual commission). The applicable MTF rule and rate pages shall be made available to member companies.

b. Where a member company chooses to use its own rates and has a voluntary relationship with the producer of the mandatorily assigned exposures, the member company shall pay the producer the same

renewal commission it would have paid such producer if such exposures had been renewed voluntarily.

c. Where a member company chooses to use its own rates and does not have an [sic] voluntary relationship with the producer of the mandatorily assigned exposures, the member company shall negotiate in good faith with each producer, or all the producers as a group, to determine the commission to be paid to such producer(s) for the mandatorily assigned exposures. Provided, however, that the commission agreed to between the member company and such producer shall be equivalent to the compensation paid to, or on behalf of, its own agents for renewal business (e.g. advertising expenses, office overhead expenses, contingent commissions). For purposes of this provision, agent shall be construed to have the broadest possible meaning, including, but not limited to, exclusive agents or independent agents.

d. In the case of member companies that are direct writers, while their rates do not include specific expenses for commissions paid to agents, their rates do include expenses for a direct marketing department and related support staff. This expense must be considered in determining the commission to be paid to producers under paragraph (c) above. Provided, however, that the commission agreed to by the direct writer and the producer under paragraph (c) above shall be equivalent to the compensation paid to independent agents for renewal business by member companies that utilize such agents.

e. All member companies shall pay commissions to producers of the mandatorily assigned exposures

so long as the member company continues to insure such exposures.

21. The member company shall be permitted to use prospectively rates and rules filed and approved by the Department after the start of the Mandatory Depopulation Assignment Plan. Provided, however, member companies that issue six (6) month policies shall be precluded from using the new rates and rules in issuing the second six (6) month policy, but rather shall use the same rates and rules which were used in issuing the first six (6) month policy.

22. The producer of the mandatorily assigned exposures has no right to place new business with the member company, unless the producer and member company enter into a voluntary relationship. Provided, however, that the producer of the mandatorily assigned exposures has the right to submit endorsement change request forms on behalf of the assigned policyholder if requested to do so by the policyholder. Any such change in coverage, limits, options or deductibles submitted by the producer on behalf of the policyholder shall be effective immediately and not upon subsequent approval of the member company.

23. For purposes of the Mandatory Depopulation Assignment Plan, the performance standards governing the conduct of producers of the mandatorily assigned exposures shall be the applicable MTF Producer Standards (MTF Plan of Operation, Operating Principles, Part III – Producers). Essentially, the member company is prohibited from requiring the producer of the mandatorily assigned exposures to satisfy greater requirements than

those required by the MTF (e.g. member company cannot compel producer to obtain Errors and Omissions coverage). These standards shall apply until October 1, 1992. After this date, the member company shall apply its own producer performance standards.

24. The member company shall report to the MTF cases of producer misconduct there the member company believes that the producer of the mandatorily assigned exposures is not complying with the applicable MTF performance standards. In reporting such cases, the member company shall provide detailed documentation to the MTF which evidences such producer misconduct. The member company shall provide such other information as may be requested by the MTF. The MTF shall consider such charges and shall take appropriate disciplinary action, including, but not limited to, revocation or termination of the producer's MTF contract. Provided, however, that no failure on the part of the producer of the mandatorily assigned exposures to properly perform under the provisions of the MTF Producer Standards shall prejudice the rights of a good faith assigned policyholder to coverage with the member company.

25. The MTF shall notify the member company of those cases where the MTF contract of the producer of the mandatorily assigned exposures is revoked or terminated by the MTF or where it subsequently determined by the MTF that the producer of the mandatorily assigned exposures does not have a [sic] MTF producer contract. Upon such notification from the MTF, the member company shall be under no obligation to pay any commission to such producer of the mandatorily assigned exposures and

may reassign such exposures to its own agents for servicing.

26. The member company shall recognize a producer of record change for the mandatorily assigned exposures and shall follow its normal voluntary business practices (e.g. cancellation of the old policy and rewrite of the new policy). Provided, however, that the member company shall rewrite the policy for at least the one (1) year period from which the exposure was originally assigned to the member company.

27. Each month for fourteen (14) consecutive months after the effective start date of the Mandatory Depopulation Assignment Plan, each member company shall report separately the following information to the Department concerning the exposures assigned to it:

a. The number of policy records received from the Equifax;

b. The number of offers of coverage issued for the assigned exposures;

c. The number of offers of coverage accepted by the assigned Association or MTF policyholders and the number of exposures in force by territory; and

d. The number of policies which are canceled or nonrenewed. Whenever a policy is canceled or nonrenewed, the member company shall provide the Department with a separate report from that required by this provision indicating the policyholder's name, address (including zip code), telephone number (including area code), policy number and the specific reason why such policy was canceled or nonrenewed.

28. The information required by item 27 above shall be delivered and received by the Department no later than the close of business on the 20th calendar day of the month such report is due. Where the 20th calendar day falls on a weekend or holiday, the report is due by the close of the next business day. The report and the content of the report required by item 27 above shall be prescribed by the Department and is attached hereto as Exhibit 7. The report required by item 27 above shall be mailed to the Department at the following address:

New Jersey Department of Insurance
Automobile Residual Market Unit
20 West State Street
CN 329
Trenton, New Jersey 08625-0329

If the Mandatory Depopulation Assignment Plan requires member companies to begin offering coverage to assigned exposures no later than March 1, 1991 for Association and MTF policies due to expire on April 1, 1991, the first member company report would be due April 20, 1991 and each month thereafter until the last report is submitted on June 20, 1992.

29. All costs associated with the administration of this Mandatory Depopulation Assignment Plan, as approved by the Commissioner, shall be paid by the member companies that are subject to mandatory assignments. Such costs shall include, but are not limited to, computer time of the Equifax, Association and/or MTF servicing carriers; programming costs; cost of computer tapes; reproduction of MTF rate pages; postage and priority mail service.

30. The Commissioner reserves the right to make additional assignments pursuant to the Mandatory Depopulation Assignment Plan if he determines that the goals of such plan are not being met based on the reports filed by the member companies pursuant to item 27 above.

31. The Commissioner reserves the right to revise the provisions of the Mandatory Depopulation Assignment Plan as he deems necessary in order to accomplish the goals of such plan.

EXHIBIT 2

(MEMBER COMPANY LETTERHEAD INFORMATION GOES HERE)

(Insert mailing date of notice)

Newly Assigned Automobile Insurance Company:
(Insert member company name)
(Insert member company address, including city, state & zip code)
(Insert 800 toll free policyholder telephone number, if available or New Jersey telephone number, including area code, where policyholder can call for general information)

Previous Automobile Insurance Company:
New Jersey Automobile Full Insurance Underwriting Association (JUA)

Serviced by: (Insert name of JUA servicing carrier)
JUA Policy Number: (Insert JUA policy number)

JUA Policy Expiration Date: (Insert policy expiration date)

Policyholder:
(Insert name of policyholder)
(Insert policyholder's address, including city, state & zip code)

Dear Policyholder:

Your automobile insurance policy with the New Jersey Automobile Full Insurance Underwriting Association (JUA) expires on (insert JUA policy expiration date).

As you probably know, the Fair Automobile Insurance Reform Act (FAIR Act) abolished the JUA and replaced it with the Market Transition Facility of New Jersey (MTF).

The FAIR Act also required private insurance companies to insure an increasingly larger share of New Jersey drivers. Under this program, private insurance companies had to insure 68 percent of all cars by October 1, 1990.

However, some companies did not write enough new policies by that 1990 deadline. As a result, these companies are being assigned drivers from the JUA and MTF.

As part of this program, your policy has been selected for assignment to (insert member company name). Some important facts about this assignment plan are:

1. (Insert member company name) must offer you the same or similar coverage as you have under your JUA policy. (Insert member company name) cannot offer you

less coverage. If the same or similar coverage is unavailable, (insert member company name) must offer you the next broadest coverage available.

2. If you accept this offer of coverage, (insert member company name) must insure you for a minimum of one year from (insert MTF policy expiration date), the expiration date of your MTF policy.

3. (Insert member company name) cannot cancel or nonrenew your policy during this one year period, except for nonpayment of premium.

4. You can ask (insert member company name) for additional coverage, less coverage, or other changes in your coverage. You may have to complete a Coverage Selection Form to make any changes in your coverage.

The enclosed offer is based on information sent to (insert member company name) by your MTF servicing carrier. Your premium may later change based on new information (for example, new car, new job, additional motor vehicle violations or accidents).

Please send your payment to (insert member company name) and not to your MTF servicing carrier. Be sure to include your name and new policy number on your check.

You may receive offers of coverage from other private insurance companies. You may shop around for coverage with another company on your own. THE CHOICE IS YOURS.

However, you must choose one of these offers of coverage or obtain coverage on your own because state law requires you to carry liability coverage.

Since you were assigned to (insert member company name), *you are not eligible to renew your policy with MTF.*

You should also know that under the FAIR Act you will have the right to buy insurance from the private insurance company of your choice beginning on April 1, 1992, if you have fewer than nine insurance points on your record. Please contact your insurance broker or the Public Affairs Division at the Department of Insurance if you have additional questions.

Please keep in mind that you are still represented by the same broker. Your broker is available to answer your questions and to advise you on your coverage.

Thank you for your cooperation.

c: (Insert producer name)
(Insert producer business address)
(Insert producer telephone number, including area code)

EXHIBIT 3

(MEMBER COMPANY LETTERHEAD INFORMATION GOES HERE)

(Insert mailing date of notice)

Newly Assigned Automobile Insurance Company:
(Insert member company name)
(Insert member company address, including city, state & zip code)
(Insert 800 toll free policyholder telephone number, if available, or New Jersey telephone number, including

area code, where policyholder can call for general information)

Previous Automobile Insurance Company:
Market Transition Facility of New Jersey (MTF)
Serviced by: (Insert name of MTF servicing carrier)
MTF Policy Number: (Insert MTF policy number)
MTF Policy Expiration Date: (Insert policy expiration date)

Policyholder:
(Insert name of policyholder)
(Insert policyholder's address, including city, state & zip code)

Dear Policyholder:

Your automobile insurance policy with the Market Transition Facility of New Jersey (MTF) expires on (insert MTF policy expiration date).

As you probably know, the Fair Automobile Insurance Reform Act (FAIR Act) abolished the New Jersey Automobile Full Insurance Underwriting Association (JUA) and replaced it with the MTF.

The FAIR Act also required private insurance companies to insure an increasingly larger share of New Jersey drivers. Under this program, private insurance companies had to insure 68 percent of all cars by October 1, 1990.

However, some companies did not write enough new policies by that 1990 deadline. As a result, these companies are being assigned drivers from the JUA and MTF.

As part of this program, your policy has been selected for assignment to (insert member company name). Some important facts about this assignment plan are:

1. (Insert member company name) must offer you the same or similar coverage as you have under your MTF policy. (Insert member company name) cannot offer you less coverage. If the same or similar coverage is unavailable, (insert member company name) must offer you the next broadest coverage available.

2. If you accept this offer of coverage, (insert member company name) must insure you for a minimum of one year from (insert JUA policy expiration date), the expiration date of your JUA policy.

3. (Insert member company name) cannot cancel or nonrenew your policy during this one year period, except for nonpayment of premium.

4. You can ask (insert member company name) for additional coverage, less coverage, or other changes in your coverage. You may have to complete a Coverage Selection Form to make any changes in your coverage.

The enclosed offer is based on information sent to (insert member company name) by your JUA servicing carrier. Your premium may later change based on new information (for example, new car, new job, additional motor vehicle violations or accidents).

Please send your payment to (insert member company name) and not to your JUA servicing carrier. Be sure to include your name and new policy number on your check.

You may receive offers of coverage from other private insurance companies. You may shop around for coverage with another company on your own. THE CHOICE IS YOURS.

However, you must choose one of these offers of coverage or obtain coverage on your own because state law requires you to carry liability coverage.

Since you were assigned to (insert member company name), *you are not eligible to renew your policy with the MTF.*

You should also know that under the FAIR Act you will have the right to buy insurance from the private insurance company of your choice beginning on April 1, 1992, if you have fewer than nine insurance points on your record. Please contact your insurance broker or the Public Affairs Division at the Department of Insurance if you have additional questions.

Please keep in mind that you are still represented by the same broker. Your broker is available to answer your questions and to advise you on your coverage.

Thank you for your cooperation.

c: (Insert producer name)
(Insert producer business address)
(Insert producer telephone number, including area code)

EXHIBIT 4

(MEMBER COMPANY LETTERHEAD
INFORMATION GOES HERE)

(Insert mailing date of notice)

Automobile Insurance Company
(Insert member company name)
(Insert member company address, including city, state & zip code)
(Insert 800 toll free policyholder telephone number, if available, or New Jersey telephone number, including area code, where policyholder can call for information)

Policyholder
(Insert name of policyholder)
(Insert policy number)
(Insert policyholder's address, including city, state & zip code)

IMPORTANT NOTICE

Thank you for choosing to be insured with (Name of Company). Our records indicate that you have not signed and returned the Coverage Selection Form sent to you with our (offer/policy). We need to have a copy of a signed Coverage Selection Form in our files. Therefore, another Coverage Selection Form and Buyer's Guide is enclosed with this Notice.

Please review the enclosed Coverage Selection Form. It is already filled in with the same or equivalent policy coverages and limits selections that you made for your JUA policy. *If you do not want to change the coverages or*

limits, simply sign the form and return it in the envelope provided.

If you wish to make changes in your policy coverages or limits, review the Buyer's Guide and/or consult with your producer and make changes to the Coverage Selection Form and return it in the envelope provided.

IF YOU DO NOT SIGN AND RETURN THIS COVERAGE SELECTION FORM, SOME OF YOUR COVERAGES WILL CHANGE AUTOMATICALLY AS DESCRIBED BELOW AND THESE CHANGES MAY NOT BE WHAT YOU DESIRE.

(1) You will receive the Lawsuit Threshold for Item 2; and

(2) If you have Collision and Comprehensive Coverages, you will receive the $500 deductible unless the deductible on your JUA policy was higher.

To ensure that you have the policy coverages and limits that you want, please sign and return the Coverage Selection Form in the envelope provided. If you have any questions, please call your producer or our Customer Service representatives at the number listed above.

Thank you for your cooperation.

c: (Insert Producer Name)
(Insert Producer Business Address)
(Insert Producer Telephone Number, including area code.)

EXHIBIT 5

(MEMBER COMPANY LETTERHEAD
INFORMATION GOES HERE)

(Insert mailing date of notice)

Automobile Insurance Company
(Insert member company name)
(Insert member company address, including city, state & zip code)
(Insert 800 toll free policyholder telephone number, if available, or New Jersey telephone number, including area code, where policyholder can call for information)

Policyholder
(Insert name of policyholder)
(Insert policy number)
(Insert policyholder's address, including city, state & zip code)

IMPORTANT NOTICE

Thank you for choosing to be insured with (Name of Company). Our records indicate that you have not signed and returned the Coverage Selection Form sent to you with our (offer/policy). We need to have a copy of a signed Coverage Selection Form in our files. Therefore, another Coverage Selection Form and Buyer's Guide is enclosed with this Notice.

Please review the enclosed Coverage Selection Form. It is already filled in with the same or equivalent policy coverages and limits selections that you made for your MTF policy. *If you do not want to change the coverages or*

limits, simply sign the form and return it in the envelope provided.

If you wish to make changes in your policy coverages or limits, review the Buyer's Guide and/or consult with your producer and make changes to the Coverage Selection Form and return it in the envelope provided.

IF YOU DO NOT SIGN AND RETURN THIS COVERAGE SELECTION FORM, SOME OF YOUR COVERAGES WILL CHANGE AUTOMATICALLY AS DESCRIBED BELOW AND THESE CHANGES MAY NOT BE WHAT YOU DESIRE.

(1) You will receive the Lawsuit Threshold for Item 2; and

(2) If you have Collision and Comprehensive Coverages, you will receive the $500 deductible unless the deductible on your MTF policy was higher.

To ensure that you have the policy coverages and limits that you want, please sign and return the Coverage Selection Form in the envelope provided. If you have any questions, please call your producer or our Customer Service representatives at the number listed above.

Thank you for your cooperation.

c: (Insert Producer Name)
(Insert Producer Business Address)
(Insert Producer Telephone Number, including area code.)

EXHIBIT 6

IBM STANDARD LABELS
DCB INFORMATION
RECORD FORMAT = VARIABLE BLOCKED
BLOCKSIZE = 32760
STREAMING TAPE DENSITY = 6250

FIELD NAME	FIELD TYPE	FIELD LENGTH
RECORD KEY		
POLICYHOLDER RECORD		
Producer Name		
Additional Producer Name	A/N	40
Producer Address	A/N	40
Additional Producer Address	A/N	40
Producer City-State-Zip	A/N	39
Policy Expiration Date	N	6
Policyholder Name	A/N	40
Additional Policyholder Name	A/N	40
Policyholder Address (Mailing)	A/N	40
Additional Policyholder Address (Mailing)	A/N	40
Policyholder City-State-Zip (Mailing)	A/N	39
Policyholder Rating Address	A/N	40
Additional Rating Address	A/N	40
Rating City-State-Zip	A/N	39
DRIVER RECORD (5)		
Driver Name	A/N	40
Driver License Number	A/N	22
State of License	A/N	2
Date of Birth	A/N	6
Driver Sex Code	A	1
Driver Marital Status	A	1
Date Licensed	N	6

DRIVER EVENT RECORD (5)		
Driver Event Code	A/N	5
Driver Event Date	N	6
Event At-Fault Indicator	A	1
Total Points	N	2
DRIVER CLAIM RECORD (5)		
Claim Date of Loss	N	6
Claim At-Fault Indicator	A	1
Claim Coverage Codes	A/N	8
Total Amount Paid	N	7
Date Paid	N	6
Accident Date	N	6
Claim Number	A/N	20
Comments	A/N	150

FOR MANDATORY ASSIGNMENT POLICIES

VEHICLE RECORD		
Rating Territory	A/N	2
Garage Zip Code	N	5
Model Year	A/N	2
Vehicle Make/Model	A/N	17
Vin Number	A/N	17
Vehicle Type	A/N	1
Vehicle Symbol	A/N	2
Expiring Class Code	A/N	6
Vehicle Driver Date Of Birth	N	6
Anti-Theft Device Discount Percent	N	1
Passive Restraint Flag	A/N	1
Vehicle Stated Amount (Worth)	N	6
Driver Number	N	2
Principal Operator Indicator	A	1
Bodily Injury - Split	A/N	1
Bodily Injury - CSL	A/N	1
Property Damage	A/N	1
Medical Expense	A/N	1
Uninsured Motorist - Split	N	1

Uninsured Motorist – CSL	N	1
Uninsured Motorist – PD	N	1
UMPD Deductible	A/N	1
Tort Threshold	A/N	1
PIP Coverage	A/N	3
PIP Deductible	A/N	1
PIP Setoff Flag	A/N	1
Comprehensive Deductible	A/N	3
Collision Deductible	A/N	3
Rental Reimbursement	A	1
Non-Owned Coverage	A/N	2
Sound Tapes	A	1
Sound Equipment	A/N	1
Cost of Customization	N	6
LIENHOLDER NAME RECORD		
Lienholder Indicator	A/N	1
Lessor/Additional Insured Record	A/N	1
ASSIGNED COMPANY IDENTIFIER		
NAIC Company/Group Number	N	8

EXHIBIT 7

MANDATORY DEPOPULATION ASSIGNMENT PROGRAM MEMBER COMPANY MONTHLY REPORT

MEMBER COMPANY OR GROUP NAME: NAIC NO.:
(DATE OF REPORT) FOR MONTH OF TOTAL NO. OF EXPOSURES ASSIGNED:

RATING TERR. #	# OF RECORDS RECEIVED (FOR MO.)	CUMULATIVE # OF RECORDS RECEIVED (YR TO DATE)	# OF OFFERS ISSUED (FOR MO.)	CUMULATIVE # OF OFFERS ISSUED (YR TO DATE)	# OF OFFERS ACCEPTED (FOR MO.)	CUMULATIVE # OF OFFERS ACCEPTED (YR TO DATE)	IN FORCE EXPOSURES WRITTEN (FOR MO.)	CUMULATIVE IN FORCE EXPOSURES WRITTEN (YR TO DATE)	# OF POLICIES CANCELED/ NONRENEWED (FOR MO.)	CUMULATIVE # OF POLICIES CANCELED/ NONRENEWED (YR TO DATE)

EXHIBIT 7

MANDATORY DEPOPULATION ASSIGNMENT PROGRAM MEMBER COMPANY MONTHLY REPORT

HER COMPANY OR GROUP NAME: NAIC NO.:
(OF REPORT) FOR MONTH OF TOTAL NO. OF EXPOSURES ASSIGNED:

RATING TERR. #	# OF RECORDS RECEIVED (FOR MO.)	CUMULATIVE # OF RECORDS RECEIVED (YR TO DATE)	# OF OFFERS ISSUED (FOR MO.)	CUMULATIVE # OF OFFERS ISSUED (YR TO DATE)	# OF OFFERS ACCEPTED (FOR MO.)	CUMULATIVE # OF OFFERS ACCEPTED (YR TO DATE)	IN FORCE EXPOSURES WRITTEN (FOR MO.)	CUMULATIVE IN FORCE EXPOSURES WRITTEN (YR TO DATE)	# OF POLICIES CANCELED/ NONRENEWED (FOR MO.)	CUMULATIVE # OF POLICIES CANCELED/ NONRENEWED (YR TO DATE)
TOTALS										

APPENDIX 2

In the Matter of the Assignment of Exposures to the AETNA CASUALTY AND SURETY COMPANY, Allstate Insurance Company and Colonial Penn Insurance Company.

Superior Court of New Jersey, Appellate Division.

Argued March 6, 1991.
Decided May 20, 1991.

The opinion of the court was delivered by

COHEN, R.S., J.A.D.

Aetna, Allstate and Colonial Penn are insurers doing auto insurance business in New Jersey. On January 24, 1991, the Commissioner of Insurance ordered each of them to issue auto policies, commencing April 1, 1991, to thousands of "exposures" (private passenger cars requiring insurance) then insured in the "residual" market through the Joint Underwriting Association. The order was in furtherance of the phasing-out or "depopulation" of JUA undertaken by the Commissioner pursuant to the Fair Automobile Insurance Reform Act of 1990 ("FAIR Act"). *L.* 1990, *c.* 8. The initial set of orders went to 44 insurers and required coverage of some 211,000 exposures. We stayed the effect of the depopulation orders pending the appeals, consolidated them, and accelerated briefing and argument.[1] We now affirm the

---

[1] Colonial Penn Insurance Company had a special problem. It had an already-filed appeal pending in this court relating to the Commissioner's order establishing the conditions under which it would be permitted to withdraw from the New Jersey auto insurance market. One of those conditions was that withdrawal could take place only over a period of five years. During that time, Colonial Penn would be exposed to FAIR Act

(Continued on following page)

depopulation orders in part, but we invalidate them in part as unauthorized by the enabling legislation.

The setting is the perennially troubled New Jersey auto insurance market. The legislative highlights of the past twenty years start with the adoption in 1970 of the assigned risk plan, which authorized the forced distribution among insurers of auto insurance applicants who were unable to procure coverage "through ordinary methods." *N.J.S.A.* 17:29D-1. Effective on January 1, 1973, was the New Jersey Automobile Reparation Reform Act, *N.J.S.A.* 39:6A-1 *et seq.*, which made auto insurance compulsory and created extensive no-fault benefits but imposed a tort suit threshold that barred very few tort suits. *See also N.J.S.A.* 39:6B-1.

In 1983 appeared the New Jersey Automobile Full Insurance Availability Act, *N.J.S.A.* 17:30E-1 *et seq.*, whose purpose was to supplant the assigned risk system and "to assure to the New Jersey insurance consumer full access to automobile insurance through normal market outlets at standard market rates, . . . and to require that companies be made whole for losses in excess of regulated rates on all risks not voluntarily written. . . . " *N.J.S.A.*

(Continued from previous page)

obligations for the depopulation of JUA and the satisfaction of JUA deficits. We consolidated Colonial Penn's appeal from the January 24 depopulation order to the extent that it raised issues other than those arising out of its status as a withdrawing insurer, leaving the latter issues for consolidation with its already-filed appeal of the Commissioner's withdrawal order.

17:30E-2. Unlike the assigned risk system, the new legislation contemplated coverage provided by JUA, at standard market rates, to risks rejected by the voluntary market. Although policies were to be issued in the names of servicing insurers, the risks would be borne by JUA, and servicing insurers would be paid fees for handling coverage, premiums and claims. JUA's underwriting losses, which were inevitable, would be made up from bad-driver and accident surcharges imposed by the Division of Motor Vehicles and JUA, and the "residual market equalization charge" ("RMEC"), which was to be levied equally on all autos insured in the voluntary and residual markets except those with principal drivers aged 65 years or older. *N.J.S.A.* 17:30E-8b. *See* Senate Labor, Industry and Professions Committee Statement, Assembly, No. 1696-*L.* 1983, *c.* 65. The RMECs were to be sufficient to permit JUA to operate on a no-profit, no-loss basis. *N.J.S.A.* 17:30E-3o.

In 1988, amendments to various statutes were made to correct deteriorating conditions in the auto insurance industry. Insurers were more and more restricting their voluntary coverage to the most favorable risks, leaving fully half of the State's drivers to be covered through JUA at artificially low rates. JUA was experiencing constantly worsening imbalances, and was kept afloat by increasingly large charges imposed on all New Jersey drivers. *See* Governor's Reconsideration and Recommendation Statement, Senate No. 2637-*L.* 1988, *c.* 119. Blame was variously assigned by various people. It was the overgenerous no-fault law. It was the refusal of the Commissioner of Insurance to permit insurers to earn an

adequate rate of return on voluntary business. It was the refusal of insurers to provide coverage to urban drivers

The new statutes introduced an optional verbal threshold for tort actions, *N.J.S.A.* 39:6A-8, 8.1; flex-rating for insurers, *N.J.S.A.* 17:29A-44; an insurers' excess profits law, *N.J.S.A.* 17:29A-5.6 *et seq.;* 10% annual increases in JUA rates for bad drivers for four years, *N.J.S.A.* 17:30E-13a through d, an authorization for deferral of JUA payments of bodily injury losses when JUA's income is insufficient to meet its obligations, *N.J.S.A.* 17:30E-8.1; an authorization for a multi-tier rating system in the voluntary market, including rates for good drivers and substandard risks, *N.J.S.A.* 17:29A-45; and a requirement for the audit of servicing carriers to find and recover overcharges resulting from their claims practices, and treble damages for wilful overcharges. *N.J.S.A.* 17:30E-17.1. *See* Senate Labor, Industry and Professions Committee Statement, Assembly No. 3702-*L.* 1988, *c.* 156.

Perhaps the most important aspect of the 1988 legislation was a scheme for the downsizing, or depopulation, of JUA over a four-year period, to the end that it would serve only its original purpose of providing insurance coverage for the least desirable risks. *N.J.S.A.* 17:30E-14. Those residual risks would be charged self-sustaining rates, which would not be subsidized by the voluntary market. The statute directed the Commissioner to establish procedures to govern the voluntary market's[2] writing

---

[2] The 1988 and 1990 legislation is full of references to compulsory measures to be applied to the "voluntary" market.

(Continued on following page)

of JUA insureds and applicants for insurance. In annual increments, the voluntary market insurers were to increase the percentage of private passenger car exposures they insured in the voluntary market from 50% to 60%, then 70%, 75% and 80%. Methods were prescribed for apportioning and assigning to voluntary market insurers the number of JUA insureds sufficient to make up any shortfall that occurred in the required annual increase in voluntarily written policies.

On March 12, 1990, the FAIR Act became law, effective immediately. It attacked most of the same problems to which the 1988 legislation was addressed. It did so, however, in a more urgent and drastic manner. One of the elements of the FAIR Act was the imposition on the voluntary market of surtaxes and assessments to satisfy the $3.3 billion of accumulated obligations of JUA.[3] Fees

---

(Continued from previous page)

An example is the obligatory "voluntary market quota" in *N.J.S.A.* 17:30E-14b(1). The only way for the reader to avoid constant surprises is to read the word "voluntary" without attaching any connotation of free will.

[3] For a discussion of the impact of the surtaxes and assessments on the ratemaking process, see our recently filed *Allstate Ins. Co. v. Fortunato*, 248 *N.J.Super.* 153, 590 *A.*2d 690 (App.Div.1991). The statute prohibits a carrier to pass through the amount of the surtaxes and assessments in premium increases. The facial constitutional validity of the prohibition was upheld in *State Farm Mut. Auto Ins. Co. v. Fortunato*, 124 *N.J.* 32, 590 *A.*2d 191 (1991), in the light of the constitutional, statutory, and regulatory entitlement of the insurers to an adequate rate of return.

to be collected from doctors, lawyers, and auto body shops were also devoted to the same purpose. *N.J.S.A.* 17:33B-58 to 63. Most importantly, the Legislature abandoned JUA as a continuing insurance market mechanism.

The function of JUA was turned over by the statute to the Market Transition Facility ("MTF"). MTF was expected to operate from October 1, 1990 to September 30, 1992, when it would go out of business. Premiums on policies issued by MTF were initially to be based on September 30, 1990 JUA rates. *N.J.S.A.* 17:33B-11. No RMECs, however, were to be charged after April 1, 1991. The loss of MTF support would have to be made up from other sources. MTF's profits and losses were to be apportioned among the auto insurers. *N.J.S.A.* 17:33B-11d. It was expected that JUA's business would already have decreased to 40% of the total private auto market under the 1988 legislation, and then to 32% soon after enactment of the 1990 FAIR Act. By April 1, 1991, only 29% of the market was to be covered by MTF; by October 1, 1991, 20%, and by April 1, 1992, 10%. MTF was to write no new business after October 1, 1992, after which exposures rejected by the voluntary market would be relegated to the assigned risk plan. *N.J.S.A.* 17:33B-11c(5); 17:29D-1.

It was pursuant to the 1990 FAIR Act that the Commissioner promulgated his January 24 depopulation orders. There were 44 orders issued, one to every insurer that failed to meet its share of the first stage of distribution of JUA insureds to the voluntary market. There were 24 other insurers that had already met their quotas, and therefore avoided the obligation to accept further exposures to satisfy the goal of reducing the portion of the

auto insurance market covered by JUA/MTF. The appellants suspect that these 24 insurers made their quotas by "cherry-picking" the least-risk JUA/MTF insureds. That may be so. If it is, the appellants had the same opportunity, and apparently chose not to utilize it.

The insurers raised various objections to the orders. Our approach to each of the issues presented by these appeals is governed by some basic principles. It is clear that the insurance industry is strongly affected with a public interest, and is therefore properly subject to comprehensive regulation to protect the public welfare. *Sheeran v. Nationwide Mut. Ins. Co.*, 80 *N.J.* 548, 559, 404 *A.*2d 625 (1979). The Legislature has broad discretion in adopting police power regulations governing the insurance business to promote what the Legislature views as the public interest. This includes the power to compel insurers to cover people they would rather not insure. *California State Auto. Ass'n Inter-Ins. Bur. v. Maloney*, 341 *U.S.* 105, 71 *S.Ct.* 601, 95 *L.Ed.* 788 (1951). It also includes requiring insurers to renew policies they would like to drop. *Sheeran, supra*, 80 *N.J.* at 560, 404 *A.*2d 625. The State's broad regulatory powers must be exercised, however, so as to allow insurers a fair and reasonable return. *Id.*

Administrative actions, such as the Commissioner's depopulation orders, must be upheld unless they exceed his statutory authority, or are arbitrary, capricious or unreasonable. *Henry v. Rahway State Prison*, 81 *N.J.* 571, 579-580, 410 *A.*2d 686 (1980). The burden is on the objector to overcome the presumption that agency actions are valid and reasonable. *Medical Soc'y of New Jersey v. New Jersey Dept. of Law and Public Safety*, 120 *N.J.* 18, 25, 575

*A.*2d 1348 (1990). The Commissioner's expertise in the field of insurance must be given great weight. *IFA Ins. Co. v. New Jersey Dept. of Ins.*, 195 *N.J.Super.* 200, 206-207, 478 *A.*2d 1203 (App.Div.), *certif. denied*, 99 *N.J.* 218, 491 *A.*2d 712 (1984).

I.

The insurers' first objection was that the depopulation orders assigned JUA/MTF exposures that were not eligible under the FAIR Act for assignment to the voluntary market. They argued that the depopulation orders made assignments of the entire books of business of producers[4] in particular territories without regard to the likelihood that the books contain individual risks so substandard that they must ultimately be in the 10% that will be relegated to the assigned risk pool after MTF completes its transitional function. The Commissioner conceded that he included such risks in his orders, but argued (a) that § 20 of the FAIR Act permitted him to determine that all drivers would be eligible, (b) that it was utterly impractical for him to weed out the worst risks, and (c) that assigning only good drivers and keeping the bad in MTF would be unfair to other MTF insureds and would improperly reward insurers who did not meet their voluntary depopulation quotas and therefore had to accept assignments.

---

[4] A producer is a licensed agent or broker, *N.J.S.A.* 17:30E-3(*l*).

N.J.S.A. 17:33B-13 contains a definition of "eligible person." In general, it is a person who has not given any of the seven listed indications of presenting an enhanced insurance risk, such as accidents, criminal convictions, and an accumulation of auto insurance eligibility points. However, the definition expressly applies only to a listed group of statutory provisions that deal with post-MTF eligibility for the voluntary market. FAIR Act § 20, *N.J.S.A.* 17:30E-14, is not one of those provisions. *N.J.S.A.* 17:30E-14 was a part of the 1988 legislation and survives as amended in 1990. *N.J.S.A.* 17:33B-13 was newly enacted in 1990. *N.J.S.A.* 17:30E-14 authorizes the Commissioner to develop "criteria identifying drivers who should be eligible for coverage in the voluntary market," and to make assignments of people meeting those criteria. The Commissioner argued in briefs before us that the *N.J.S.A.* 17:33B-13 definition does not control, and that it was permissible for him to exercise his judgment to determine that every person insured by JUA/MTF was eligible for the voluntary market for the purpose of the depopulation orders.

At oral argument before us, for reasons not explained, the Commissioner announced that he had changed his mind. His new position was that he agreed with the insurers that they should have to provide coverage only for exposures that would be considered eligible under *N.J.S.A.* 17:33B-13. He added, however, that the insurers would have to investigate and identify the ineligibles assigned to them, and he would not afford them sufficient time to do so before their coverage obligation attached. That position created the serious question whether the insurers would thereafter be permitted to

shed the insureds they discovered were ineligible after initiating coverage.

Because we sensed that an equitable accommodation could be reached, we gave the parties time to confer. They ultimately arrived at a solution which gave the insurers the burden of identifying ineligible exposures, but which also gave them sufficient time to permit them to withhold offering coverage to ineligibles and to permit the ineligibles to remain MTF insureds.

The issue of eligibility was thus equitably and sensibly resolved by the parties. We describe the dispute, and the manner in which the confrontation was dissolved, for a purpose. It is to put other disputes raised before us in better perspective. It is also to demonstrate that a more deliberate process of legislative enactment and administrative implementation could have prevented the actors from feeling obliged to take sword's point litigation postures on a number of matters having sensible and reachable solutions.

II.

N.J.S.A. 17:30E-14a instructs the Commissioner to establish "an equitable apportionment procedure" for the assignment of JUA/MTF insureds to insurers who fail to meet their periodic quotas. What the Commissioner did in the present group of depopulation orders was to distribute first the JUA/MTF insureds from those geographical territories in which the voluntary market covered the lowest percentages of the total exposures. Those territories are urban and economically depressed areas where, according to the insurers, a disproportionate number of

high-risk insureds are located. In addition, they argue, New Jersey's capped premium rates are purposely set at levels insufficient to reflect the extent of the risks actually incurred in covering inner city insureds. Selecting those least favored risks for assignment has the effect, according to the insurers, of imposing on them the penalty of writing the greatest-loss policies after other insurers have skimmed the cream of the JUA/MTF exposures. Instead, the exposures to be assigned in the depopulation orders should have been chosen at random from the entire list of eligible JUA/MTF exposures, without regard to territory. Only by that means, according to the insurers, could an equitable apportionment have been made.

There are a number of answers. The first is that the facts have changed since the insurers developed their argument. The change is the significant one of the Commissioner's agreement to let them delete from the depopulation orders the drivers deemed ineligible under *N.J.S.A.* 17:33B-13. The second answer is that The FAIR Act permits insurers taking on the coverage of assigned exposures to charge them MTF premium rates, which are higher than the voluntary market rates. *N.J.S.A.* 17:33B-12. The MTF rates will be even higher for bad drivers. *N.J.S.A.* 17:29A-35. The prospect of taking on bad risks at low rates is therefore not as dire as the insurers contend. The third is that every insurer had the opportunity to "cherry-pick", that is, each of them has known for many months the number of JUA/MTF exposures it had to take on in order to avoid assignments in the depopulation orders. Some insurers chose to reach out to add to their share of the market. Others chose not to do so. The "equitable apportionment" of exposures is

not necessarily achieved by placing insurers that have chosen to remain part of the problem on a par with insurers that have come forward to participate in the solution.

The fourth answer is that equity among insurers is not the only equity that legitimately concerned the Legislature and the Commissioner. The plain fact is that urban auto owners have not had fair access to the voluntary auto insurance market in recent years. The result is that great numbers of perfectly sound drivers have been relegated to JUA coverage. Perhaps it is because insurers abandoned the inner cities for profitable suburban business, without distinguishing good urban drivers from bad, as the Commissioner contends. Perhaps it is because the State did not permit the insurers to write inner city business without incurring substantial and irremediable losses, as the insurers reply. The early assignment of urban exposures in the depopulation process serves to give good urban drivers the same access to the benefits of the voluntary market as their suburban counterparts. Those benefits include a greater choice of benefits and carriers, and, eventually, of costs.

The choice the Commissioner made responds to legitimate legislative concerns in a reasonable way that does not unfairly prejudice the insurers. In these circumstances our responsibility is not to interfere.

III.

The insurers next argue that the feature of the depopulation orders assigning producers to the insurers with their books of business directly contravenes the

letter and spirit of *N.J.S.A.* 17:30E-14i(3). The Commissioner argues that the assignment of producers is a legitimate effort on his part to effectuate the legislative will as derived from harmonizing *N.J.S.A.* 17:30E-14i(3) with *N.J.S.A.* 17:33B-9c, both of which deal with the role of JUA/MTF producers during and after the process of depopulation.

N.J.S.A. 17:30E-14i(3) is a part of the 1988 legislation that first approached the subject of downsizing JUA. It deals with the procedures to that end which the Commissioner was told to develop. It provides that those procedures shall

> neither prohibit nor require member companies to write association business through association producers of record, provided, however, that where a member company elects not to service such business through the association producer of record, the procedures shall address the manner in which the association shall transfer the business to the member company, and shall establish reasonable compensation in an amount sufficient to offset the actual expenses incurred by the association producer in conjunction with the transfer which shall be paid by the association upon transfer of the business to the member company;

As we understand the provision, it says that an insurer taking on former JUA exposures as part of the depopulation plan may continue to write the business through the JUA producer who has been writing it, but need not do so

if it does not want to. If the insurer chooses not to write the business through the JUA producer, JUA transfers the exposure to the assigned insurer, and JUA pays the producer for the actual expenses of transfer. Even though the quoted language was part of the 1988 legislation, it appears as a part of § 20 of the FAIR Act, which is the section that amends the 1988 legislation to shorten the time periods for depopulation increments. It would be impossible in those circumstances to disregard the language, as the Commissioner says we should, as "a remnant" of earlier legislation which somehow slipped into the new law. We cannot assume that the Legislature did not know what it was enacting.

N.J.S.A. 17:33B-9c is new language in the FAIR Act, and is therefore, according to the Commissioner, the current legislative expression of policy. It says:

> The commissioner shall, on or before October 1, 1991, establish a producer assignment program. The program shall be available upon application to any licensed insurance producer who: (1) is a producer for the association; (2) has no affiliation with a voluntary market company for the purposes of placement of private passenger automobile insurance; (3) had an affiliation with an insurance company for the placement of automobile insurance in the voluntary market which was terminated by the insurer on or after December 31, 1980; (4) has demonstrated to the commissioner his competency, efficiency and effectiveness in servicing association and other insurance business as determined by a review of the record of the producer for complaints,

> violations of the licensing law and other factors deemed relevant by the commissioner; and (5) is located and services insurance in a geographic area which the commissioner has determined to lack sufficient representation for the placement of automobile insurance business in the voluntary market. The program shall provide for the assignment of qualified producers on an equitable basis to insurers writing private passenger automobile insurance in the voluntary market.

As we understand this provision, it is intended to create a post-October 1, 1991 assignment program for certain JUA/MTF producers who wish to participate, and who meet five listed criteria. Among them are that the producer has no affiliation with a voluntary market insurer, and that the producer is located and services insurance in a geographical area which the Commissioner determines has insufficient representation in the voluntary market. The Commissioner is directed to establish a program by October 1, 1991, to assign qualified producers on an equitable basis to voluntary market insurers. He has not yet done so. He has not determined whether the producers assigned to insurers in the January 24 depopulation orders would qualify for assignment under his yet-unestablished program.

The goal of the assignment program is to protect producers who have built businesses and developed insurance expertise writing JUA/MTF policies, and at the same time to encourage an auto insurance sales and service presence in underserved urban areas. The goal of *N.J.S.A.* 17:30E-14i(3), on the other hand, is to permit

voluntary market insurers to accept JUA/MTF assignments of exposures and service them through their own existing organizations, but with JUA/MTF providing compensation for transfer expenses to the affected producer. Aetna, for instance, intends to direct-write its assigned business. Colonial Penn does business only by direct writing.

The Commissioner argues that he "harmonized" the two statutory sections by assigning producers so that they will be able to survive until the October 1 assignment program has been established.[5] Otherwise, he says, the program will be ineffective because the producers will have gone out of business.

It may well be that the producers would experience a lesser impact from the depopulation of JUA/MTF if the assignment of any of their business to the voluntary market had to include them as producers. But that would not justify our ignoring the plain words of *N.J.S.A.* 17:30E-14i(3), words that were enacted only in 1988 and repeated in the FAIR Act in 1990. They flatly prohibit requiring voluntary market insurers to write assigned JUA/MTF business through the former producer of the business, or requiring the insurers to compensate the producers. If there is a discontinuity in the legislation, the Legislature can correct it in short order if it chooses to do

---

[5] Before us, the Commissioner announced that his assignment of producers would be for one year only, a limitation not contained in the January 24 depopulation orders. The change is not material to the legal problem before us.

so. But, the Commissioner may not ignore the statute in the name of "harmonization."

IV.

Next, the insurers complain about that part of the depopulation orders that require them to cover the assigned exposures for a full year. Many insurers write six-month policies in their voluntary market business, without any objection from the Commissioner. They argue that they should be able to fold the assigned business into their established practices, and write six-month policies for their newly assigned business.

This is a matter which the Commissioner's judgment should control. He is dealing with the transfer to the voluntary market of hundreds of thousands of exposures. There will inevitably be disruption and inconvenience to everyone involved. In requiring full-year policies, the Commissioner sought to achieve in at least one manageable area a degree of uniformity and predictability. The means seem suited to achieve the desired end. The insurers' understandable concern is their own business convenience, but there is no legal entitlement to write six-month policies, and no real prejudice in being barred from doing so. In this respect, the Commissioner's orders are affirmed.

V.

The insurers also object that the orders unlawfully require them to offer to insure a substantially greater

number of exposures than necessary to meet their individual depopulation shortfalls. This is another issue that time seems to have resolved.

The Mandatory Depopulation Assignment Plan stated that the assignments to each insurer would be increased by an "acceptance factor" of 25%. The actual language was:

> The number of exposures assigned to each member company shall be increased by an acceptance factor of 25 percent. It is the expectation of the Department that not every offer of coverage made by a member company to its assigned policyholders will be accepted. This expectation is based on the dynamic aspect of the New Jersey automobile insurance market (i.e. Association or MTF policyholders independently seeking coverage with a voluntary insurer, competition among member companies to write additional new business in order to meet future depopulation quotas, and Association or MTF policyholders leaving New Jersey).
>
> * * *
>
> The member company must continue to make offers of coverage to all assigned . . . policyholders even when the member company has written sufficient exposures to meet its apportionment share shortfall. Any exposures written in excess of the apportionment share shortfall may be used by the member company toward the fulfillment of its next apportionment share.

Two things developed while the appeals were before us. The first was that the increase of 25% was never applied to the insurers involved in these appeals. For a

reason not revealed to us, Aetna was not assigned an extra 25% of its shortfall but only an extra 7%. The Commissioner's brief justified the 7% excess on the unsupported thesis that "the industry norm for non-selection of renewals by the insured is 5-10%." Allstate, on the other hand, received an assignment of 94% of its shortfall. Colonial Penn received 99% of its shortfall. It has never been explained to us how the urgent reasons earnestly recited for the original decision to assign a 25% excess have dissipated.

It is apparent that the percentage differences among the assignments is accounted for by the Commissioner's decision to assign exposures in blocks consisting of producers' entire books of business. Since the Commissioner and the insurers have now decided that only eligible persons under *N.J.S.A.* 17:33B-13 will be assigned, the number of exposures in a producer's book of business cannot be used as an accurate measure for assignment. In addition, since we have decided that producers may not lawfully be assigned to the voluntary market insurers with their books of business, there is much less reason to make assignments by use of producers' books, even after culling out the ineligibles.

For those reasons there is no purpose in our ruling on the legality of a depopulation order provision which the Commissioner has apparently abandoned and which, in any event, is no longer justifiable even as a convenience.

VI.

Allstate argues that the Commissioner made "retroactive" changes in the depopulation procedures that

"unjustly impact Allstate." The reference is to the formula by which the quota of each insurer was to be calculated and the manner by which exposures were to be selected for assignment. Allstate contends that it made underwriting decisions in reliance on the depopulation plan adopted by the Commissioner before the FAIR Act (1) to use a 50-50 weighting of insurers' 1983 and 1988 voluntary business in the quota formula, and (2) to make assignments on a random basis. After those decisions were made, the Commissioner changed the ground rules by amending the formula to use a 75-25 weighting of the insurers' voluntary 1983 and 1988 business, thereby discounting recent shrinkage of an insurer's voluntary business,[6] and by deciding to assign JUA/MTF exposures by territory and without regard to statutory eligibility. "Obviously," Allstate argues, "had Allstate known in a timely fashion that its obligations to insure former JUA insureds would be retroactively enlarged to require insurance of more exposures, to exclude any eligibility criteria in the assignment process, and to selectively assign from the most underpriced territories, Allstate would have expanded its underwriting guidelines and made targeted sales efforts so as to enable it to initially insure more of the better JUA risks, avoiding the need to later accept the worst of these risks."

---

[6] Colonial Penn attacks the 75-25 weighting on the basis of its impact on a withdrawing insurer whose 1988 business was a fraction of its 1983 business. We do not foreclose Colonial Penn from making this argument in its appeal from the Commissioner's order establishing conditions for withdrawal.

There are a number of sound answers. The first is that Allstate does not demonstrate in any way what makes it obvious that it would have made consequential changes in underwriting or in corporate strategy. Skimming the cream from JUA was always encouraged by the depopulation plans. The only effect of the changes was to make skimming an even better idea. The second is that the problem of the assignment of ineligibles has been resolved in Allstate's favor by the Commissioner. The third is that it is sensible to give 1983, the last year before the voluntary market had JUA available as a dumping ground for undesirable risks, three times the weight as 1988, the fifth year of JUA operation, when it had absorbed fully half of New Jersey's drivers. The fourth is that the challenged changes in the Commissioner's approach to the pressing problems he faced were responsive to the urgency displayed by both the letter and the spirit of the FAIR Act. In sum, Allstate has not shown either that it did in fact rely on the 1989 plan, or that such reliance was justified, detrimental and such as to create a protectible interest against change. Thus, we need not rule on the appropriateness of estoppel as a remedy for changing administrative action.

VII.

Finally, all of the insurers argue that it is unconstitutional for the Commissioner to implement the depopulation plan because (a) they are operating at a loss in their New Jersey auto insurance businesses, (b) the Commissioner is purposely and unlawfully delaying consideration of rate filings they have made seeking necessary premium increases, and (c) as things now stand, they will

inevitably lose money on the new business that the Commissioner proposes to assign them.

The parties do not disagree about the law applicable to this issue. The insurers are entitled to earn a reasonable rate of return on their New Jersey auto insurance business. *Sheeran, supra,* 80 *N.J.* at 560, 404 *A.*2d 625. The return should be one which is generally commensurate with returns on investments in other enterprises having comparable risks. *State Farm Mut. Auto Ins. Co. v. State of New Jersey,* 124 *N.J.*32, ___, 590 *A.*2d 191 (1991). There is no right to make money on every policy written, or on every day of business. There is, however, a right to have the regulatory agency which exercises the rate-making function do its job reasonably promptly, and with no more delay than is necessarily involved in the review process itself. *Helmsley v. Borough of Fort Lee,* 78 *N.J.* 200, 226-230, 394 *A.*2d 65 (1978), *appeal dismissed,* 440 *U.S.* 978, 99 *S.Ct.* 1782, 60 *L.Ed.*2d 237 (1979). The prime reason for expecting prompt consideration of rate increases is that they are prospective only. *Petition of Elizabethtown Water Co.,* 107 *N.J.* 440, 452-459, 527 *A.*2d 354 (1987). Thus, rates that were inadequate during a prolonged review process cannot be retroactively increased or otherwise made up.[7] In addition, the insurers argue that, although a certain period of regulatory lag is unavoidable, it is one thing to

---

[7] Board of Public Utilities statutes and regulations deal with the problem of regulatory lag by permitting implementation of interim rates, subject to rebate. *See In re Revision of Rates, Toms River Water Co.,* 82 *N.J.* 201, 208-212, 412 *A.*2d 430 (1980).

ask insurers to continue writing insurance they voluntarily contracted for while proposed rate hikes are carefully examined, but it is altogether another thing to coerce insurers to take on new business they do not want, at currently inadequate rates, and tell them to be patient while their requests for adequate rates wend their way through the regulatory process.

What the parties disagree about, at the tops of their voices, are the facts. The record before us is full of significant and irreconcilable factual differences. The insurers offer complex financial analyses and the assurance of their actuaries and executives that they are losing millions of dollars on their current New Jersey business. They say the near future promises even greater losses with or without their assigned JUA/MTF business, that the Commissioner is dragging his feet in considering their rate filings, and that forcing more business on them at insufficient rates is confiscatory. The Commissioner offers equally complex analyses and the assurance of his actuaries that the insurers are really doing just fine, and that their complaints are baseless.

The insurers and the Commissioner not only disagree on the facts. They also accuse each other of bad faith, and describe each other's motives as unworthy, tactics as inappropriate, and goals as improper. There is a counterproductive air of distrust and hostility that surrounds the subject and displaces reasonable discussion.

However good the insurers' evidence may be of currently insufficient rates on their voluntary business, that evidence does not bear directly on the economic impact of their taking on JUA/MTF exposures. One reason is

that they have rate filings pending which could result in higher revenues. Another reason is that they need not charge their voluntary market rates to the exposures they are assigned. Instead, they can charge MTF rates. Current MTF rates are higher than the current voluntary market rates of Aetna and Allstate, and, we assume, also of Colonial Penn. In addition, MTF rates will be supplemented for substandard drivers who are still eligible for assignment. The supplement may not be as great as the insurers think will be necessary, but that is very difficult to evaluate now. Moreover, MTF has already applied to the Commissioner for a 28% rate hike, approval of which would further increase premium levels. Not enough, say the insurers, pointing out that MTF has announced that its rates need a 60% increase to permit MTF to break even; insurers are entitled to earn a profit, and MTF's break-even rates are therefore inadequate by definition.[8]

The insurers do not make a case of sufficient strength to justify our entering an order freezing in place a currently disastrous insurance industry situation until the insurers' hyperbole can be tested against the Commissioner's incredulity. The resulting turmoil in the State's auto insurance industry would be intolerable.

The insurers suggest another possibility, which is that the depopulation process proceed with the Commissioner's permitting them to charge interim enhanced premium rates on assigned exposures, the excess of which

---

[8] We understand that, after oral argument before us, the Commissioner completed his review of MTF's rate filing and has granted some but not all of the rate relief MTF sought. We cannot evaluate the impact of his decision on these parties.

would be escrowed by the insurers until all of the relevant rate filings have been considered and approvals made to raise voluntary market and MTF rates to a level at which the insurers will be able to earn an adequate return.

The Commissioner replies that he has no power to approve interim rates with effective consumer protections against overcharges. We need not resolve that dispute. *Cf. New Jersey St. AFL-CIO v. Bryant*, 55 *N.J.* 171, 260 *A.*2d 225 (1969).

The insurers will be able to charge the recently enhanced MTF rates to their assigned exposures. That creates a better situation than was predicted for the insurers at the time of their briefs and oral arguments. Whether it is better enough would no doubt be the subject of some disagreement. We are in no position, however, to predict whether that untested new business taken on by the insurers from MTF at untested new MTF premium rates will result in future losses so clear and significant that the insurers are entitled to protection in advance.

Except as to the provision for the assignment of producers and those matters which we have said have been resolved without our decision, *i.e.*, the assignment of ineligibles and the assignment of an excess of 25% of quota, the January 24, 1991 depopulation orders of the Commissioner are affirmed.

APPENDIX 3

SUPREME COURT
OF NEW JERSEY
C-73 September Term 1991

33,829

IN THE MATTER OF THE ASSIGNMENT OF EXPOSURES TO THE AETNA CASUALTY AND SURETY COMPANY, ALLSTATE INSURANCE COMPANY AND COLONIAL PENN INSURANCE COMPANY,

ON PETITION FOR CERTIFICATION

(Filed Sept. 18, 1991)

(Allstate Insurance Company – Petitioner)

To the Appellate Division, Superior Court,

A petition for certification of the judgment in A-2628/2631/2783-90T5 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs; and it is further

ORDERED that the appeal in the within matter is dismissed pursuant to *R.* 2:12-9.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 16th day of September, 1991.

I hereby certify that the foregoing is a true copy of the original on file in my office.

/s/ Stephen W. Townsend
CLERK OF THE
SUPREME COURT
OF NEW JERSEY

/s/ Stephen W. Townsend
CLERK OF THE
SUPREME COURT

APPENDIX 4

IN THE MATTER OF THE ASSIGNMENT OF EXPOSURES TO THE AETNA CASUALTY AND SURETY COMPANY, ALLSTATE INSURANCE COMPANY AND COLONIAL PENN INSURANCE COMPANY.	) SUPREME COURT OF) NEW JERSEY) DOCKET NO. CIVIL ACTION) ON PETITION FOR) CERTIFICATION) OF FINAL JUDGMENT OF) NEW JERSEY SUPERIOR) COURT, APPELLATE) DIVISION) Sat Below: Judges Long, Cohen and Stern, J.A.D.) (Filed July 9, 1991) SUPREME COURT OF NEW JERSEY

PETITION FOR CERTIFICATION AND APPENDIX OF ALLSTATE INSURANCE COMPANY

Of Counsel &
On the Brief:

Suzanne M. McSorley
Thomas E. Hastings

SMITH STRATTON WISE HEHER & BRENNAN
600 College Road East
Princeton, New Jersey 08540
(609) 924-6000
Attorneys for Petitioner-Appellant Allstate Insurance Company

Of Counsel &
On the Brief:

Duane C. Quaini
William T. Barker

SONNENSCHEIN NATH & ROSENTHAL
8000 Sears Tower
Chicago, Illinois 60606-6404
(312) 876-8000
Attorneys for Petitioner-Appellant Allstate Insurance Company

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ..... [A-69]

PRELIMINARY STATEMENT ..... [A-71]

STATEMENT OF MATTER INVOLVED ..... [A-72]

Voluntary Market Rate Inadequacy ..... [A-73]

The JUA and Creation of the Residual Market Rate Inadequacy ..... [A-75]

Creation of the MTF and Deepening of the Residual Market Rate Inadequacy ..... [A-77]

Impact of Rate Inadequacy on the Depopulation Order ..... [A-79]

Disproportionate Assignments by Territory .... [A-80]

QUESTIONS PRESENTED AND REASONS FOR CERTIFICATION ..... [A-82]

COMMENTS ON THE APPELLATE DIVISION'S OPINION ..... [A-83]

I. THE APPELLATE DECISION IMPROPERLY IGNORED ALLSTATE'S PRIMA FACIE SHOWING OF CONFISCATION ..... [A-83]

II. THE COMMISSIONER'S DEPOPULATION-BY-TERRITORIES SCHEME IS INHERENTLY INEQUITABLE ..... [A-89]

CONCLUSION ..... [A-92]

APPENDIX

Depopulation Order ..... [omitted]

Appellate Division Decision ..... [omitted]

TABLE OF AUTHORITIES

Page

Cases

Allstate Insurance Co. v. Fortunato, 248 N.J. Super. 153, 590 A.2d 690 (App. Div. 1991) ..... [A-74]

Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944) ..... [A-83 n. 7]

In re Elizabethtown Water Co., 107 N.J. 440, 527 A.2d 354 (1987) ..... [A-75]

In re Industrial Sand Rates, 66 N.J. 12, 327 A.2d 427 (1974) ..... [A-75, 87]

In re New Jersey Power & Light Co., 15 N.J. 82, 104 A.2d 1 (1954) ..... [A-87, n. 9]

In re "Plan of Orderly Withdrawal" of Twin City Fire Ins. Co., Docket No. A-114-90T5 (N.J. App. Div. June 11, 1991) ..... [A-80, n. 6]

New Jersey State AFL-CIO v. Bryant, 55 N.J. 171, 260 A.2d 225 (1969) ..... [A-87]

Prendergast v. New York Telephone Co., 262 U.S. 43 (1923) ..... [A-85]

Smith v. Illinois Bel [sic] Telephone Co., 270 U.S. 587 (1926) ..... [A-86]

State Farm Mutual Automobile Insurance Co. v. Fortunato, 124 N.J. 32, 590 A.2d 191 (1991) .. [A-74, 75, 83]

Troy Hills Village v. Township Council, 68 N.J. 604, 350 A.2d 34 (1975) ..... [A-83 n. 7]

TABLE OF AUTHORITIES – Continued

Page

Statutes

FAIRA § 16 ..... [A-78]

FAIRA § 17 ..... [A-78]

FAIRA § 88 ..... [A-7 & 79]

N.J.S.A. 17:29A-4 ..... [A-73 & n. 1]

N.J.S.A. 17:29a-14 ..... [A-73]

N.J.S.A. 17:29A-35 ..... [A-76]

N.J.S.A. 17:29A-36 ..... [A-81]

N.J.S.A. 17:30-1 ..... [A-71]

N.J.S.A. 17:30E-3(o) ..... [A-77]

N.J.S.A. 17:30E-7(b) ..... [A-76]

N.J.S.A. 17:30E-7(c) ..... [A-76]

N.J.S.A. 17:30E-8(a) ..... [A-76]

N.J.S.A. 17:E-8(b) ..... [A-77]

N.J.S.A. 17:30E-13 ..... [A-76]

N.J.S.A. 17:30E-14 ..... [A-71, 82]

Other Authorities

JUA Plan, Operating Principles, Part I, § 7 ..... [A-77]

PRELIMINARY STATEMENT

The Automobile Full Insurance Availability Act of 1983 ("JUA Act"), *N.J.S.A.* 17:30-1 *et seq.*, created the New Jersey Automobile Full Insurance Underwriting Association (the "JUA") to insure, at voluntary-market rates, drivers whom private insurers were not willing to insure at those rates. In 1988, the Legislature sought to "depopulate" the JUA, which had at that point grown to approximately 50% of the New Jersey automobile insurance market, by establishing a series of increasing percentages of vehicles in the State which must be insured in the voluntary market. *N.J.S.A.* 17:30E-14.

The Commissioner of Insurance ("Commissioner") was required to establish standards for apportioning industrywide depopulation obligations among these insurers and for assigning JUA insureds to private insurers if the required percentages of vehicles had not been insured. Because of the JUA's inadequacies, the Fair Automobile Insurance Act of 1990 ("FAIRA") abolished the JUA, temporarily transferred the JUA's remaining business to the Market Transition Facility ("MTF") and accelerated the contemplated depopulation of the JUA/MTF into the private market.

Allstate Insurance Company ("Allstate") seeks certification from a judgment of the Appellate Division upholding, in relevant part, an order ("Depopulation Order" or "Order") issued by the Commissioner requiring Allstate to offer insurance for approximately 30,000 vehicles now insured by the MTF, which is the statutory successor to the JUA.

No adequate rates have ever been set for this compelled business. Nor has a proceeding been held which would allow Allstate to charge such adequate rates. As a result, Allstate showed that, at the rates in effect at the time of the Depopulation Order, it would suffer an annual operating loss on depopulation business of approximately $20 million and that no excess profits were available from its other business to absorb that loss. (Allstate Appellate Division Appendix ("ALa") 43a-45a) Current rate inadequacies cannot be recouped in the setting of future rates, so the Depopulation Order presents a clear risk of irreparable harm to Allstate's statutory and constitutional rights not to suffer confiscation of its property. The Commissioner and the Appellate Division have refused to protect Allstate against this risk of irreparable harm pending determination of the proper rates.

The Order also requires Allstate to accept a disproportionate number of depopulation assignments from the New Jersey territories where, due to limitations on geographic rate differentials, the rates are the most inadequate. That method of assignment violates the statutory requirement that depopulation assignments be made in an "equitable" fashion.

STATEMENT OF MATTER INVOLVED

This case arises against a background of long-standing rate inadequacy in both the voluntary market for New Jersey automobile insurance and the residual market (served formerly by the JUA and now by the MTF). That rate inadequacy has been deliberately produced, in large measure, by legislative and regulatory decisions: (1)

to defer payment of the full costs of the automobile insurance system; (2) to shift those costs from the regular ratemaking process by use of subsidies since eliminated by FAIRA; (3) to shift costs from higher loss areas of the State to lower loss areas; and (4) to impose taxes and assessments to cover past deficits while denying any prompt rate adjustment to cover those taxes and assessments. Regulatory efforts to shield the voters from the full costs of the automobile insurance system have also played a part.

Voluntary Market Rate Inadequacy

New Jersey has very expensive automobile insurance because it has a high accident rate, high medical and repair costs, and an automobile insurance system that provides very generous benefits. (ALa 54a-55a) New Jersey also stringently regulates insurance rates, requiring the Commissioner's approval for any increase. *N.J.S.A.* 17:29A-4, -14.[1] The Insurance Department's own studies show that strict regulation has been used "to avoid paying the actual cost of the State's high accident rate and unbalanced no-fault system" and has thereby rendered the system unprofitable for private insurers. (ALa 56a, 47a)

---

[1] Since 1944, the New Jersey insurance statutes have directed that rates be made "that are not unreasonably high or inadequate for the safety and soundness of the insurer, and which do not unfairly discriminate between risks in this State involving essentially the same hazards and expense elements." *N.J.S.A.* 17:29A-4.

FAIRA has added to the costs of private insurers by imposing taxes and assessments to be used to defray JUA deficits whose origin is discussed below. The substantive terms of FAIRA forbade any recovery of those taxes and assessments from policyholders, though this Court has now held that FAIRA's preamble permits some recovery through rate filings. *State Farm Mutual Automobile Insurance Co. v. Fortunato,* 124 N.J. 32, 590 A.2d 191 (1991).

In August, 1990, shortly after the possibility of such relief was suggested by the Commissioner, Allstate sought a rate increase for this purpose. Only by obtaining a writ from the Superior Court was Allstate able to obtain referral of that application for hearing. *Allstate Insurance Co. v. Fortunato,* 248 N.J. Super. 153, 590 A.2d 690 (App. Div. 1991). No hearing has yet begun. However, even without consideration of Allstate's claimed need for rate relief, it has been required to pay the taxes and assessments for which recovery is sought. Unless its prior rates were grossly excessive, this would have rendered its current rates inadequate for even its existing business.[2]

---

[2] Affidavits show that, based on rate levels at the time of the Depopulation Order, Allstate projected an annual operating loss of $111 million, of which $20 million would be attributable to depopulation business. (ALa 43a-45a) In addition to the August, 1990 rate filing seeking recovery of the FAIRA taxes and assessments, Allstate made a filing in October, 1990 seeking an adjustment for its other rate needs. Hearings on that filing began in February, 1991 and it will yet be months before there is a decision.

Since Allstate filed its initial applications for rate increases, events have demonstrated that even larger increases would be

(Continued on following page)

Even once rate adjustments can be provided for the FAIRA taxes and assessments, FAIRA's restrictions on recovery will require that rates be held to the minimum level consistent with constitutional guarantees on a fair return. *State Farm Mutual Automobile Insurance Co. v. Fortunato, supra,* 124 N.J. at 60-62, 590 A.2d at 205-07. Accordingly, voluntary market business can provide no excess profits which could be used to cover rate deficiencies on depopulation assignments.

Moreover, current or past rate inadequacies may not be compensated by granting higher-than-normal rates in the future. *In Re Elizabethtown Water Co.,* 107 N.J. 440, 449-51, 527 A.2d 354, 359-60 (1987); *In re Industrial Sand Rates,* 66 N.J. 12, 23, 327 A.2d 427, 433 (1974). Only the *prospective* costs of the insurance to be provided may be considered in setting rates. Thus, unless current rates are made adequate, an insurer may suffer irrecoverable losses.

The JUA and Creation of the Residual Market Rate Inadequacy

In light of the high costs of no-fault insurance and the difficulty of obtaining rates which would cover those costs, many drivers who would otherwise have been attractive customers were unable to procure insurance in

---

(Continued from previous page)

necessary just to cover the costs of writing the insurance Allstate is required to write. Accordingly, and in light of the protracted period necessary for rate proceedings, Allstate sought interim rate relief, subject to refund if later found excessive. The Commissioner has never acted on this request.

the voluntary market. To eliminate this obstacle to voluntary writing, the JUA was created.

All New Jersey automobile insurers were required to be members of the JUA. Some insurers were to act as JUA servicing carriers – to issue policies, collect premiums and handle claims. However, neither members nor servicing carriers were to have any liability under JUA policies. *N.J.S.A.* 17:30E-7(b), -7(c), -8(a).

The Legislature contemplated that the rates permitted on JUA policies would be similar to those charged in the voluntary market, and, so, would not suffice to pay the losses and expenses of those policies. *N.J.S.A.* 17:30E-13.[3] Thus, it provided the JUA with additional sources of revenue.

One such source was "policy constants" originally prescribed by the Commissioner to subsidize the former assigned risk plan. These were fixed sums included in all insurance premiums, which private insurers used to partially defray their losses on assigned risk policies. Policy constants were continued under the JUA Act and were required to be remitted to the JUA by the insurers collecting them. *N.J.S.A.* 17:30E-8(a); 17:29A-35. Additionally, the Commissioner was empowered to impose a residual market equalization charge ("RMEC") to be collected by insurers on every insured vehicle and remitted to the JUA. The RMEC was to be set, in light of the other

---

[3] A subsequent Insurance Department study has noted that JUA insureds with clean driving records have accident frequencies 35% higher, on average, than similar insureds in the voluntary market. (ALa 63a)

resources available, to allow the JUA to operate on a no-profit, no-loss basis. *N.J.S.A.* 17:30E-3(o), 8(b).

By November 8, 1984, less than two years after the JUA was created, the JUA Board – relying on outside consultant actuaries – recognized the JUA was operating at a loss and needed a RMEC to meet its statutory mandate to balance its books. The Board projected a $200 million deficit for 1984, and, if no RMEC were charged, a nearly $2 billion deficit for 1990. Rather than approve a RMEC, however, the Commissioner mandated that the JUA adopt a cash-flow method of accounting, paying claims arising out of old policies with premiums received under new policies *without* setting aside the reserves necessary to meet the obligations arising under the policies whose premiums were thus diverted. JUA Plan, Operating Principles, Part I, § 7 (May 24, 1985). RMEC's were later imposed when the JUA's cash-flow needs made this absolutely essential.

Adoption of cash-flow funding for the JUA made an eventual financial disaster virtually inevitable. The JUA was denied revenues adequate to fund the reserves necessary to pay for losses already incurred, thereby creating a deficit in the assets necessary to pay existing claims. The JUA's rates were so severely inadequate that, even with a subsidy from RMEC's and policy constants (totaling roughly $700 million in 1989 alone), the JUA incurred a deficit of over $3 billion.

Creation of the MTF and Deepening of the Residual Market Rate Inadequacy

FAIRA abolished the JUA and made certain provisions for funding its accumulated deficit. The JUA was

forbidden to issue or renew any policy after September 30, 1990, so its last policies would expire by September 30, 1991. FAIRA § 16. Significantly, neither RMEC's nor policy constants were to be imposed on or after April 1, 1991. FAIRA § 17.

In light of the JUA's cessation of all writing on September 30, 1990, the MTF was created to arrange for the issuance and renewal of policies from October 1, 1990 through September 30, 1992. FAIRA § 88(a)-(c). The MTF was initially to charge the JUA rates in effect on September 30, 1990. FAIRA § 88(c)(2). The losses suffered by the MTF (or, hypothetically, its profits) were to be shared among the insurers doing business in the voluntary market. FAIRA § 88(a).

The JUA's rates became those of the MTF, *but the MTF is not entitled to either RMEC's or policy constants.* FAIRA § 17. Those subsidies amounted to over 30% of the JUA's inadequate revenues in 1989. Their elimination deepened the JUA/MTF rate inadequacy.

In November, 1990, the MTF obtained two independent actuarial studies indicating that its rates must increase an average of roughly 60% to cover the costs of insuring its current population. The MTF, which is operated by the Insurance Department, sought a rate increase of only 28%. And, on May 10, 1991, the Commissioner entered an order allowing only an 18.6% increase, though virtually conceding that at least a 47.4% increase was indicated by the record before him. Indeed, the 18.6% increase would not even replace the lost JUA subsidies, let alone cover the JUA's rate inadequacy.

Thus, the MTF rates too are wholly inadequate. Accordingly, the remainder of the costs (amounting to hundreds of millions of dollars) of insuring the MTF population will be imposed on Allstate and other private insurers, which are statutorily obligated to absorb the MTF's losses. FAIRA § 88.

Impact of Rate Inadequacy on the Depopulation Order

Policies issued pursuant to the Depopulation Order must be written at Allstate's own voluntary market rates or those of the MTF. However, even were Allstate's voluntary-market rates adequate (which they are not), they would not suffice for JUA/MTF insureds, whose accident frequency is on average substantially higher than comparable voluntary-market insureds. Even the MTF rates, which are generally higher than Allstate's voluntary-market rates, are inadequate.[4]

Absent a rate increase, the record below demonstrated that Allstate would suffer an insurance operating loss for policies written in 1991 of 35% of the premiums earned, an amount estimated at $111,000,000. Of this loss, approximately $20,000,000 would be produced by compliance with the Depopulation Order. (ALa 43a-45a)[5]

---

[4] This point is underscored by the fact that, as explained *infra*, Allstate is not to be assigned merely a representative share of the JUA/MTF business. It is to be given business selected from the most severely underpriced of the JUA's territories. That nearly triples the expected loss.

[5] Indeed, even were one to consider all of Allstate's New Jersey insurance business, rather than just its automobile insurance business, Allstate anticipates a substantial operating loss for 1991 absent automobile insurance rate increases. (ALa 44a)

Allstate sought a stay of the Depopulation Order, and then appealed. Allstate's appeal was based on the foregoing showing that neither its own or the MTF's rates are adequate for the risks to be assigned, and that Allstate's own rates are inadequate for the business it already writes – let alone for the higher losses of the business which the Depopulation Order would compel it to write.[6] Despite Allstate's showing that it would suffer massive losses if compelled to accept depopulation assignments at existing rates, neither the Commissioner nor the Appellate Division found or purported to find those rates adequate. However, neither protected Allstate from the resulting risk of irrecoverable loss.

Disproportionate Assignments by Territory

Insurance rates vary among different locations. In setting rates for individual insureds, insurers utilize many factors which have been found predictive of the differing levels of risk presented by those insureds. Among the most important of these predictive factors is the territory in which a vehicle is located, which reflects population density, traffic conditions, repair costs and other factors which determine the frequency of accidents and the cost levels associated with them.

---

[6] Allstate cannot avoid these losses by ceasing to do business in New Jersey, for FAIRA and the Commissioner have forbidden such cessation without more than five years notice and assumption of numerous heavy burdens in the interim. *See In re "Plan of Orderly Withdrawal" of Twin City Fire Ins. Co.*, Docket No. A-114-90T5 (N.J. App. Div. June 11, 1991). Thus, Allstate has been conscripted to remain in New Jersey.

In 1983, the Legislature altered the ratemaking standard by artificially "capping" the differentials in rates to be charged various classes of insureds. *N.J.S.A.* 17:29A-36. In particular, the base rate for a coverage in any given rating territory, exclusive of driving record surcharges and discounts, could not exceed 1.35 times the filer's statewide average base rate for that coverage. *N.J.S.A.* 17:29A-36(c).

Artificial capping of rate differentials, when actuarial data shows cost differentials exceeding the "caps," requires that some insureds be charged prices which do not reflect the full cost of the insurance provided. This results in creation of a class of underpriced customers, whom no insurer will voluntarily insure, thereby constricting availability of insurance in the voluntary market.

The Depopulation Order computes assignment percentages by territory. Exposures are first assigned from the territory with the smallest percentage of vehicles insured by private insurers, until the remaining JUA/MTF percentage in that territory equals that in the territory with the next lowest private market percentage, and so on until all the necessary assignments are made. The territories in which the MTF has the highest market share are those in which rate-capping has made the rates most inadequate. Thus, the Order assigns to Allstate a disproportionate number of the most inadequately rated risks from the rate-capped territories.

QUESTIONS PRESENTED AND REASONS FOR CERTIFICATION

This case presents a constitutional issue of first impression before this Court. May an insurer be compelled to accept new business at legally prescribed rates when those rates have never been determined to be adequate for that business, and where the insurer shows *prima facie* that those rates are not adequate for that business and that its other business generates no excess profits which could be used to support inadequate returns on the assigned business? If the Commissioner's Order is allowed to stand, the assets of all insurers in New Jersey (and, particularly, Allstate) will be subject to blatant confiscation through assignments to insure an ever-increasing number of risks at rates which can only be expected to produce substantial losses, both now and in the future.

Moreover, if the Commissioner's Order is allowed to stand, Allstate will be required, now and in the future, to accept a disproportionate number of depopulation assignments from the most inadequately rated territories in New Jersey. This will violate the statutory mandate that depopulation occur pursuant to "an equitable apportionment procedure." (*See N.J.S.A.* 17:30E-14a, whose meaning is also an important question of first impression.)

COMMENTS ON THE APPELLATE DIVISION'S OPINION

I. THE APPELLATE DECISION IMPROPERLY IGNORED ALLSTATE'S PRIMA FACIE SHOWING OF CONFISCATION.

This Court has explicitly recognized the Commissioner's "duty under the [relevant] statute to assure that insurers receive a constitutionally fair rate of return." *State Farm Mutual Automobile Insurance Co. v. Fortunato*, *supra*, 124 N.J. at 54, 590 A.2d at 202.[7] Yet, permitting the MTF depopulation to proceed under the Commissioner's Order, especially in light of the MTF Rate Order, results, prima facie, in confiscation of Allstate's property. The Appellate Division's decision fails to apprehend and/or provide any remedy for this apparent confiscation.

As described above, Allstate demonstrated, at least *prima facie*, that the rates it is permitted to charge for the business to be assigned are inadequate even to cover the costs of providing this insurance, let alone to provide a

---

[7] The power to regulate a business does not include the "power to compel the doing of [regulated] services without reward." *Troy Hills Village v. Township Council*, 68 N.J. 604, 620, 350 A.2d 34, 42 (1975). Nor may such a business be compelled to subsidize the needs of its customers. *Id.* This means that regulated rates must be sufficient not only to cover costs and expenses, but also to yield a profit "sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital." *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (citations omitted).

fair return. Nor can the loss imposed by the Depopulation Order be supported by profits from Allstate's voluntary automobile insurance business, for Allstate is experiencing massive operating losses due to FAIRA and the Commissioner's refusal to approve adequate rate increases. Finally, any profits Allstate might hope to make in other New Jersey insurance lines will be completely overwhelmed by its automobile insurance losses, thus producing a large aggregate operating loss on all New Jersey insurance operations of Allstate and its affiliates. By any standard, Allstate has made a prima facie showing that the Order has confiscatory impact.

If Allstate is forced to issue policies pursuant to an inadequate rate structure, it will suffer irreparable harm. To begin with, once a policy is issued at an inadequate rate, Allstate is powerless to alter that rate for the duration of the policy. And, as previously explained, Allstate may not recoup any such deficiency in today's rates by attempting to charge higher rates at some time in the future.

The Appellate Division was aware of the Commissioner's MTF rate decision, but determined that it could not "evaluate the impact of his decision on these parties." (Decision, p. 25 n. 8) It thus concluded that depopulation should proceed with the newly enhanced MTF rates – a situation it felt "creates a better situation than was predicted for the insurers at the time of their briefs and oral arguments," although even the Appellate Division recognized that this was perhaps not a situation that is "better enough" (*i.e.*, that it still might not provide adequate rates). (*Id.*, p. 26)

Allstate respectfully submits that, even on the record before the Appellate Division at the time this matter was briefed and argued, Allstate had made a prima facie showing of confiscation mandating relief from the Depopulation Order. That showing took full account of the then-pending request for a 28% rate increase, so the smaller increase actually granted certainly could not eliminate the confiscatory impact shown.[8]

Further, unless the losses suffered because of presently inadequate rates will be compensated at some future time, current confiscation cannot be justified on the basis that it will continue only until determination of a final rate of completion of some other proceeding (*i.e.*, Allstate's voluntary-market rate proceedings). In *Prendergast v. New York Telephone Co.*, 262 U.S. 43 (1923), for example, a telephone company was ordered to reduce its rates pending completion of hearings to set rates. The order was said to be "temporary," but (as in New Jersey) no procedure was available to recoup in the future any

---

[8] While noting that even the MTF requested less of a rate increase than necessary to "break even," the Appellate Division dismissed the confiscatory nature of the Depopulation Order because it felt it could not determine whether the MTF's rates are inadequate by definition due to their failure to provide a fair rate of return. (Decision, pp. 25-26) It was unnecessary, however, for the Appellate Division even to delve into the issue of whether Allstate would be earning a sufficient return on the business assigned to it to meet constitutional requirements. That issue would have arisen only were Allstate in a position to earn *some* return on MTF policies. But the MTF rates have been set at a level far below that which the MTF-retained actuaries concluded was necessary even to cover the cost of insuring the assigned business.

deficits that might be incurred while the "temporary" order was in effect.

The Supreme Court sustained a preliminary injunction staying the rate reduction but requiring the company to refund any charges above the level originally ordered which were later found excessive. The Court held that the ostensibly temporary character of the order did not:

> [D]eprive the Company of its right to relief at the hands of the court. The orders required the new reduced rates to be put into effect on a given date. They were final legislative acts as to the period during which they should remain in effect pending the final determination; and if the rates prescribed were confiscatory the Company would be deprived of a reasonable return upon its property during such period, without remedy, unless their enforcement should be enjoined. Upon a showing that such reduced rates were confiscatory the Company was entitled to have their enforcement enjoined pending the continuance and completion of the rate-making process.

Id. at 49. *Accord Smith v. Illinois Bell Telephone Co.*, 270 U.S. 587, 591-92 (1926) (company suffering from interim confiscatory rates is not required "to await a decision of the ratemaking tribunal before applying to a federal court for equitable relief").

To be sure, it may not be possible to determine finaliy what rates are required prior to completion of a full rate proceeding. To deal with that problem, this Court has previously approved a procedure by which a temporary, interim rate increase may be granted, with the proceeds of that increase to be held in escrow pending conclusion

of the rate proceeding, subject to refund (with interest) to whatever extent the interim increase is ultimately found excessive. *See, e.g., In re Industrial Sand Rates*, 66 N.J. 12, 25-26, 327 A.2d 427, 434-35 (1974); *New Jersey State AFL-CIO v. Bryant*, 55 N.J. 171, 176-77, 260 A.2d 225, 227-28 (1969). In this way, the regulated company is protected from irreparable loss of revenue to which it is entitled while ratepayers are protected against any ultimate liability for amounts in excess of those which they are in fact obliged to pay.[9]

Nor is the need for emergency relief the result of any lack of diligence by Allstate. Allstate's first application for a rate increase, relating to taxes and assessments, was sought in August, 1990, promptly after the Commissioner

---

[9] Of course, a regulated company is not *routinely* entitled to rate relief prior to completion of a rate proceeding. *See, e.g., In re New Jersey Power & Light Co.*, 15 N.J. 82, 90, 104 A.2d 1, 5 (1954). But this is not a case in which the rates were previously set to provide a fair and reasonable return as to the very business the regulated company would be conducting pending the establishment of new rates. Instead, no fair and reasonable rates were *ever* previously established for the business Allstate would be forced to take – the JUA rates were based on cash-flow underwriting (which Allstate is legally forbidden to conduct and which would inevitably confiscate Allstate's property to satisfy obligations for which no reserves would be provided), and on a gargantuan annual subsidy which will not be available to Allstate. Thus, there is no room for any presumption that existing rates are fair and adequate. Indeed, even the Commissioner's MTF Rate Order does not find that the MTF's current allowable rates (after the 18.6% increase) are adequate. Nor could the Commissioner so find in light of his own and the MTF's actuarial studies, showing the need for a rate increase of at least 47.4% for the MTF to break even.

announced the position that these might be recoverable in some circumstances. Allstate's second filing was made in October, 1990, promptly after it became possible to estimate (inadequately, as subsequent events have shown) the rate levels to be required in light of FAIRA and related developments.

In these circumstances, and in the face of a *prima facie* showing that the Depopulation Order will have a confiscatory impact, the Commissioner may not summarily require compliance by simply pointing to a pending rate proceeding. Before demanding compliance, he must be required either to determine, on a judicially reviewable record, that existing rates are adequate, or to permit interim rates appropriate to the *prima facie* showing until the issue of rate adequacy can be resolved.

Despite the strength of Allstate's evidence with regard to the inadequacy of its voluntary market rates, and despite the Appellate Division's reluctance to consider the impact of the MTF rates, the Appellate Division held that Allstate should be forced to proceed with writing the assigned depopulation business at rates that are insufficient even to cover the costs of providing the subject insurance. (Decision, pp. 24-27) The court dismissed, without discussion, Allstate's request to use interim rates if required to accept assignments while the rate adequacy questions were resolved. (*Id.*)

Yet, the interim rate procedure is the *only* means through which issues such as that presented by the Depopulation Order can be resolved with no permanent and irreparable harm to anyone. In the absence of interim rates, irrecoverable confiscation may occur. By allowing

Allstate to charge interim rates, subject to refund (with interest) to whatever extent the interim increase is ultimately found not to have been justified, the Appellate Division could have protected Allstate from irreparable loss with no corresponding harm to the State or Allstate's insureds.[10]

II. THE COMMISSIONER'S DEPOPULATION-BY-TERRITORIES SCHEME IS INHERENTLY INEQUITABLE.

N.J.S.A. 17:30E-14(a) provides that depopulation assignments must proceed "pursuant to an equitable apportionment procedure." Yet, rather than randomly assigning them, the Commissioner retroactively determined to systematically assign depopulation exposures from the New Jersey territories with the most inadequate rates.

The first ground cited by the Appellate Division in support of the Commissioner's conduct is that the Commissioner's agreement not to depopulate the worst

---

[10] The Appellate Division's decision itself suggests the validity of the interim rate procedure. The court stated that "[w]e are in no position . . . to predict whether . . . untested new business taken on by the insurers from the MTF at untested new MTF premium rates will result in future losses so clear and significant that the insurers are entitled to protection in advance." (Decision, p. 26) If, as the court suggested, it was in "no position" to determine Allstate's confiscation claim pending further development of the record, Allstate should at least have been permitted to protect itself from future losses pending that record development.

drivers blunts the impact of his depopulation-by-territories scheme. (Decision, p. 12) But Allstate never argued that the reason for the inequity of the Commissioner's plan is that more of the worst drivers are located in the subject territories. Rather, Allstate's point was that, by requiring it to accept a disproportionate number of assignments from those territories where rate-capping makes rates the most inadequate, the Commissioner was acting inequitably.

In other words, regardless of the characteristics of the drivers in the relevant territories, rate-capping has made those territories the most inadequately rated in the State. Consequently, whether or not the worst drivers are depopulated, the Commissioner's plan will require Allstate to accept a disproportionate number of the most inadequately rated risks.[11]

The Appellate Division next posited that it would be unfair to place insurers who met their depopulation quotas on a par with insurers, such as Allstate, who did not meet their quotas. (Decision, pp. 12-13) Yet, the

---

[11] The analysis is similar with respect to the Appellate Division's second point – that Allstate would be able to charge MTF rates, and higher rates to bad drivers at that, so depopulation-by-territories should not be inequitable. (Decision, p. 12) Once again, Allstate is not arguing that the inequity of depopulation-by-territories is that Allstate is forced to insure more bad drivers. *All* drivers in the subject territories, be they bad or good, are inadequately rated because of territorial rate-capping. Thus, the ability to charge higher rates to bad drivers will provide some additional revenue to those insuring bad drivers, wherever they reside, but has no impact on the inequity of the Commissioner's depopulation-by-territories scheme.

insurers that have met their quotas have already received a benefit – they have been able to appropriate the most desirable JUA/MTF risks for themselves. The Commissioner's depopulation-by-territories scheme confers an extra benefit upon these insurers – they henceforth neither have to insure the most underpriced risks remaining in the MTF nor bear a share of the losses those risks remaining in the MTF nor bear a share of the losses those risks impose on that entity.

The Commissioner's scheme thus adds a statutorily unauthorized penalty for insurers failing to meet their quotas) *i.e.*, they must insure a disproportionate number of the most inadequately rated risks). Such a result hardly meets the statutory mandate that depopulation be accomplished "equitably."

Finally, the Appellate Division attempts to justify the Commissioner's plan as being "equitable" to New Jersey insureds. (Decision, p. 13) Under no objective standard, however, does it make any difference whether insureds are covered by the MTF or in the voluntary market. No matter who insures a risk, the coverage provided to that insured will be identical. Moreover, all insurers can charge MTF rates to their depopulation assignments, so those assigned will receive no price discount through being insured with voluntary-market insurers rather than in the MTF.

CONCLUSION

For all the foregoing reasons, petitioner Allstate Insurance Company respectfully requests this Court to grant Allstate's Petition for Certification and to proceed to hear this appeal on the merits.

Respectfully submitted,

Of Counsel:

Suzanne M. McSorley
Thomas E. Hastings

SMITH, STRATTON, WISE, HEHER & BRENNAN

By: Thomas E. Hastings
(a member of the firm)
600 College Road East
Princeton, NJ 08540
(609) 924-6000

Of Counsel:

Duane C. Quaini
William T. Barker

SONNENSCHEIN NATH & ROSENTHAL

By: William T. Barker
(a member of the firm)
8000 Sears Tower
Chicago, IL 60606
(312) 876-8000

CERTIFICATION

I hereby certify that on July 9, 1991 I caused ten copies of a Petition for Certification to New Jersey Supreme Court on behalf of Allstate Insurance Company ("Allstate") together with nine copies of Allstate's Appellate Division Brief and Appendix to be filed with the Clerk of the New Jersey Supreme Court.

In addition, on July 9, 1991 I caused two copies of the within Petition for Certification to be served by hand

upon Douglas S. Eakeley, Acting Attorney General of New Jersey, Richard J. Hughes Justice Complex, CN 112, Trenton, New Jersey 08625, Susan Stryker, Esq., Hannoch Weisman, 50 West State Street, Trenton, New Jersey 08506 and Roselie Burrows, Esq., McCarter & English, Gateway 4, Newark, New Jersey 07102.

Furthermore, the within Petition for Certification presents a substantial question and is filed in good faith and not for purpose of delay. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ Thomas E. Hastings
Thomas E. Hastings

[Appendix Omitted]

APPENDIX 5

SMITH STRATTON WISE HEHER & BRENNAN
600 College Road East
Princeton, New Jersey 08540
(609) 924-6000

SONNENSCHEIN NATH & ROSENTHAL
8000 Sears Tower
Chicago, IL 60606
(312) 876-8000

Attorneys for Allstate Insurance Company

IN THE MATTER OF THE ASSIGNMENT OF EXPOSURES TO THE AETNA CASUALTY AND SURETY COMPANY, ALLSTATE INSURANCE COMPANY AND COLONIAL PENN INSURANCE COMPANY	SUPREME COURT OF NEW JERSEY DOCKET NO. SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-2628-90T5F, A-2631-90T5F, A-2783-90T5F (Consolidated) NOTICE OF APPEAL On Appeal From: Final Judgment of the Appellate Division Sat Below: Judges Long, Cohen and Stern, J.A.D.

TO: THE HONORABLE JUDGES OF THE SUPREME COURT OF NEW JERSEY

HON. VIRGINIA LONG, J.A.D.
Superior Court of New Jersey
Appellate Division
Hughes Justice Complex

CN-969
Trenton, New Jersey 08625

HON. RICHARD S. COHEN, J.A.D.
Superior Court of New Jersey
Appellate Division
Middlesex County Courthouse
Fifth Floor, East Wing
New Brunswick, New Jersey 08903

HON. EDWIN H. STERN, J.A.D.
Superior Court of New Jersey
Appellate Division
101 North Tower
158 Headquarters Plaza
Morristown, New Jersey 07690-3695

HON. SAMUEL F. FORTUNATO
Commissioner of Insurance
20 West State Street
Trenton, New Jersey

DOUGLAS S. EAKELEY
Acting Attorney General of
New Jersey
Richard J. Hughes Justice Complex
CN 112
Trenton, NJ 08625

Susan Stryker, Esq.
HANNOCH WEISMAN
50 West State Street
Trenton, NJ 08506
Attorneys for The Aetna Casualty
and Surety Company

Rosalie Burrows, Esq.
McCARTER & ENGLISH
Gateway 4
Newark, NJ 07102
Attorneys for Colonial Penn
Insurance Company

PLEASE TAKE NOTICE that, pursuant to Rule 2:2-1(a)(2), Allstate Insurance Company ("Allstate") appeals to the Supreme Court of New Jersey, from a final judgment of the Superior Court of New Jersey, Appellate Division, entered on May 20, 1991, affirming an Order of the Commissioner of Insurance, dated January 24, 1991 (the "Depopulation Order") for the following reasons:

(1) the Appellate Division decision sustaining the Depopulation Order compels Allstate to accept assigned new business at rates which are inadequate for that business and which, therefore, result in an unconstitutional confiscation of Allstate's property; and

(2) the Depopulation Order upheld by the Appellate Division disproportionately assigns depopulation business to Allstate from the most inadequately rated territories in New Jersey, thereby violating the statutory mandate that depopulation occur pursuant to "an equitable apportionment procedure," N.J.S.A. 17:30E-14a, and further resulting in an unconstitutional confiscation of Allstate's property.

A copy of the decision appealed from is attached hereto as Exhibit A, and a copy of the Depopulation Order at issue is attached hereto as Exhibit B.

This matter is not entitled to a hearing preference pursuant to Rule 1:2-5.

Dated: Princeton, NJ
July 12, 1991

SMITH, STRATTON, WISE, HEHER & BRENNAN
Attorneys for
Allstate Insurance Company

By: Suzanne M. McSorley
Suzanne M. McSorley

Of Counsel:

Duane C. Quaini, Esq.
William T. Barker, Esq.
SONNENSCHEIN NATH & ROSENTHAL
8000 Sears Tower
Chicago, IL 60606
(312) 876-8000

[Exhibits Omitted]

APPENDIX 6

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

United States Constitution, Amendment XIV, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX 7

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The Fair Automobile Insurance Reform Act of 1990, *L.* 1990, *c.*8 ("FAIRA"):

FAIRA § 3

3. Section 3 of P.L.1972, c.70 (C.39:6A-3) is amended to read as follows:

3. Compulsory automobile insurance coverage; limits. Every owner or registered owner of an automobile registered or principally garaged in this State shall maintain automobile liability insurance coverage, under provisions approved by the Commissioner of Insurance, insuring against loss resulting from liability imposed by law for bodily injury, death and property damage sustained by any person arising out of the ownership, maintenance, operation or use of an automobile wherein such coverage shall be at least in:

a. an amount or limit of $15,000.00, exclusive of interest and costs, on account of injury to, or death of, one person, in any one accident; and

b. an amount or limit, subject to such limit for any one person so injured or killed, of $30,000.00, exclusive of interest and costs, on account of injury to or death of, more than one person, in any one accident; and

c. an amount or limit of $5,000.00, exclusive of interest and costs, for damage to property in any one accident.

No licensed insurance carrier shall refuse to renew the required coverage stipulated by this act *of an eligible person as defined in section 25 of P.L.___, c.___ (C.___(now pending in the legislature as this bill)* except in accordance

with the provisions of section 26 of P.L.1988, c.119 (C.17:29C-7.1) or with the consent of the Commissioner of Insurance.

FAIRA § 16

16. Section 19 of P.L.1983, c.65 (C.17:30E-7) is amended to read as follows:

19. Pursuant to the plan of operation, the association shall have the power and duty to:

* * *

b. Sue or be sued in the name of the association, including taking any legal actions necessary or proper for recovery of any assessments for, on behalf of, or against members. A judgment against the association shall not create any direct liability against the servicing carrier, board of directors or the individual members, or the individual participating members of the association;

c. Indemnify its directors and employees for any and all claims, suits, costs of investigations, costs of defense, settlements or judgments against them on account of an act or omission in the scope of a director's duties or employee's employment. The association shall refuse to indemnify if it determines that the act of failure to act was because of actual fraud, willful misconduct or actual malice;

* * *

e. Arrange for the issuance of automobile insurance to any qualified applicant through servicing carriers.

Each servicing carrier shall issue policies in the name of the servicing carrier, on behalf of the association, to the extent the plan of operation provides. Servicing carriers, as agents of the association, shall have no individual liability for claims or policies written by the association. *However, notwithstanding the above, or any other provision of law to the contrary, the association shall not arrange for the issuance or renewal of any automobile insurance policy, either through a servicing carrier or on its own behalf, on or after October 1, 1990;*

* * *

r. Develop methods and standards for the establishment of adequate, actuarially sound reserves for unpaid losses and loss adjustment expenses, including provision for incurred but not reported losses.

FAIRA § 17

17:33B-6. Residual market equalization charges or flat charges

Notwithstanding any of the provisions of sections 13 to 34 of P.L.1983, c. 65 (C.17:30E-1 et seq.), section 1 of P.L.1984, c. 1 (C.17:29A-37.1) or any other law, to the contrary, no residual market equalization charges, or flat charges (also referred to as flat capitation fees or policy constants) of any kind, other than the flattened tax and expense fees implemented pursuant to section 8 of P.L.1983, c. 65 (C.17:29A-37), shall continue to be imposed or be imposed on or after April 1, 1991 on a per car or per coverage basis on automobile insurance policies or on policies insuring motor vehicles other than automobiles.

FAIRA § 18

18. Section 1 of P.L.1984, c.1 (C.17:29A-37.1) is amended to read as follows:

1. a. All flat charges (also referred to as flat capitation fees or policy constants, but not including premiums for uninsured motorist or towing coverage, or flattened tax and expense fees implemented pursuant to section 8 of P.L.1983, c.65 (C.17:29A-37)), authorized by the Commissioner of Insurance for use by all filers, as defined in section 1 of P.L.1944, c.27 (C.17:29A-1), writing private passenger automobile insurance in the voluntary and residual markets, which are [collected] *imposed* on a per car and per coverage basis on automobile insurance policies issued or renewed in the voluntary or residual market [,with an effective date of January 1, 1984 or thereafter,] *prior to April 1, 1991* shall be paid to the New Jersey Automobile Full Insurance Underwriting Association for use for association purposes. All moneys collected from the flat charges shall be certified to by the filers, including servicing carriers of the association, and transferred, net of a pro rata portion of any producer commissions and all premium taxes payable thereon, to the association in accordance with the provisions of this subsection and the association's plan of operation. No other expenses shall be payable to or deductible from the flat charges transferable to the association.

Flat charges collected under this subsection shall be transferred to the association within 10 days of the close of the month of receipt by the insurer or servicing carrier. In the case of policy premiums paid in accordance with a payment plan or other installment basis, the insurer shall, within 10 days of the close of the month of receipt of

payment, transfer to the association a proportionate share of the total flat charges on the policy, based on the payment schedule or amount of payment received.

b. [Flat charges collected on any automobile insurance policy written in the voluntary or residual market with an effective date prior to January 1, 1984, the policy term of which, however, extends into 1984, shall be retained by the insurer or filer; except that if a policy subject to this subsection has been canceled for reasons other than nonpayment of premium, the insurer or filer shall retain only that portion of the flat charges earned on the policy up to the date of cancellation and shall return any unearned remainder to the policyholder in the same manner as other unearned premiums.]

Flat charges shall not be deemed to include any moneys collected from any residual market equalization charge levied pursuant to section 20 of P.L.1983, c.65 (C.17:30E-8).

Flat charges collected in accordance with subsection a. of this section shall be considered in determining taxable premiums in accordance with P.L.1945, c.132 (C.54:18A-1 et seq.), but shall not be considered in determining excess profits in accordance with section [2 of P.L.1983, c.357 (C.17:29A-5.3)] *section 3 of P.L.1988, c.118 (C.17:29A-5.8).*

c. The flat charges authorized by the Commissioner of Insurance for private passenger automobile insurance in the voluntary and residual markets may be imposed *prior to April 1, 1991* upon all insured motor vehicles other than private passenger automobiles, including motor vehicles insured by the automobile insurance plan established pursuant to P.L.1970, c.215 (C.17:29D-1), and

motor vehicles of a type, as is determined by the Commissioner of Insurance, which are registered with the Division of Motor Vehicles as self-insured vehicles pursuant to section 30 of P.L.1952, c.173 (C.39:6-52), in accordance with rules and regulations established by the commissioner. In the case of motor vehicles other than private passenger automobiles which are insured by an insurer in the voluntary market or in any insurance plan established pursuant to P.L.1970, c.215 (C.17:29D-1), the insurer shall forward the flat charge, net of a pro rata portion of the producer's commission, to the New Jersey Automobile Full Insurance Underwriting Association. In the case of a self-insurer required to pay a flat charge, the self-insurer shall forward the full amount of the flat charge to the association. The Division of Motor Vehicles shall not issue a certificate of self-insurance unless the association has certified that the flat charge has been paid. Failure to pay the flat charge shall constitute a reasonable ground for cancellation of a certificate of self-insurance pursuant to section 30 of P.L.1952, c.173 (C.39:6-52). Any self-insurer which fails to pay the flat charge to the association for any self-insured vehicle shall be liable to pay a fine in the amount of $100.00 per vehicle for the first offense and $200.00 for the second and each subsequent offense.

Notwithstanding any other provision of this section, flat charges shall be imposed on such motor vehicles *prior to April 1, 1991* as are determined by the Commissioner of Insurance, which vehicles have been registered with the Division of Motor Vehicles in accordance with Title 39 of the Revised Statutes as commercial motor vehicles and have been issued commercial license plates or farmers'

license plates, and on motor vehicles, of a type determined by the Commissioner of Insurance, which are registered with the Division of Motor Vehicles as self-insured vehicles pursuant to section 30 of P.L.1952, c.173 (C.39:6-52).

FAIRA § 20

20. Section 26 of P.L.1983, c.65 (C.17:30E-14) is amended to read as follows:

26. a. Within 45 days of the effective date of this 1988 amendatory and supplementary act, the commissioner shall, in the plan of operation, establish procedures to govern the voluntary writing of applicants and association insureds without the utilization of the association. These procedures shall include criteria identifying drivers who should be eligible for coverage in the voluntary market. Applicants and association insureds meeting these criteria shall be subject to assignment by the association to member companies, pursuant to an equitable apportionment procedure established in the plan of operation. The procedure shall give due consideration to the increase or decrease in the volume of private passenger automobile non-fleet exposures voluntarily written by member companies in this State since January 1, 1984.

b. (1) Pursuant to the procedures established in the plan of operation under subsection a. of this section, the commissioner shall establish a voluntary market quota, which shall not be less than 60% of the aggregate number of private passenger automobile non-fleet exposures written in the total private passenger automobile insurance market in this State on the effective date of this

1988 amendatory and supplementary act. The quota shall prescribe the number of voluntary market exposures which shall be written by member companies during the 12 month period beginning 60 days after the effective date of this 1988 amendatory and supplementary act.

(2) [At the end of the first 12 month period following the effective date of this 1988 amendatory and supplementary act] *Within 30 days of the effective date of P.L.___, c. (C.___)(now pending in the Legislature as this bill)*, the commissioner shall prescribe a second quota, which shall take effect [no later than 60 days following the end of that period] *immediately upon adoption by the commissioner* and which shall not be less than [70%]*68%* of the aggregate number of private passenger automobile non-fleet exposures written in the total private passenger automobile insurance market in this State [at the end of the first 12 month period following the effective date of this 1988 amendatory and supplementary act] *on or before October 1, 1990*. The quota shall prescribe the number of voluntary market exposures which shall be written by member companies during the [12 month] period described in this paragraph.

(3) [At the end of the second 12 month period following the effective date of this 1988 amendatory and supplementary act, the commissioner shall prescribe a third quota, which shall take effect no later than 60 days following the end of that period and which shall not be less than 75% of the aggregate number of private passenger automobile non-fleet exposures written in the total private passenger automobile insurance market in this State at the end of the second 12 month period following the effective date of this 1988 amendatory and supplementary act. The quota shall prescribe the number of

voluntary market exposures which shall be written by member companies during the 12 month period described in this paragraph.](*Deleted by amendment, P.L. ___, c.___.)(now pending before the Legislature as this bill*)

(4) [No later than 60 days following the end of the third 12 month period following the effective date of this 1988 amendatory and supplementary act, the commissioner shall prescribe such a quota that will result, at the end of the fourth 12 month period following the effective date of this 1988 amendatory and supplementary act, in the volume of exposures written in the voluntary market equaling no less than 80% of the aggregate number of private passenger automobile non-fleet exposures being written in the total private passenger automobile insurance market in this State, or such volume of exposures in excess of 80% that the commissioner determines should be considered eligible for coverage in the voluntary market. The quota shall prescribe the number of voluntary market exposures which shall be written by member companies during the 12 month period described in this paragraph. After the period established in this paragraph, the association shall not write any risk for a period longer than three years, unless, at the end of that time, the insured has presented evidence that he has been rejected by at least two insurers in the voluntary market.] (*Deleted by amendment, P.L.___, c.___.)(now pending before the Legislature as this bill*)

c. In the event that any of the quotas established by the commissioner pursuant to subsection b. of this section have not been met by the end of any [12 month] *applicable* period, the commissioners shall direct the association to assign the balance of the exposures needed to meet the

applicable quota to member companies in a manner consistent with the apportionment procedure established pursuant to subsection a. of this section. A member company which [exceeds] *exceeded* its apportionment share for [any] *the* 12 month period *prescribed pursuant to paragraph (1) of subsection b. of this section* shall receive credit for the excess against the [following year's obligation] *quota imposed pursuant to paragraph (2) of subsection a. of this section.*

d. [If, at any time after the period established in paragraph (4) of subsection b. of this section, the volume of exposures written in the voluntary market equals less than 80% of the aggregate number of private passenger automobile non-fleet exposures being written in the total private passenger automobile insurance market in this State or such volume of exposures in excess of 80% that the commissioner determines should be eligible for coverage in the voluntary market, the commissioner shall direct the association to assign eligible applicants and association insureds to member companies on an equitable basis.] [*Deleted by amendment, P.L.___, c.___.)(now pending before the Legislature as this bill)*

e. For the purposes of this section, any exposure written in the voluntary market by an affiliate of the insurer to which an apportioned share has been assigned shall be credited against that share.

f. The total number of exposures written in the voluntary market, net of exposures cancelled or nonrenewed, by a member company at the end of the applicable period shall be utilized in determining

whether the member company has written its apportio
ment share in the voluntary market for purposes of con
plying with any quotas established by the commissione
pursuant to this section.

g. The commissioner may excuse a member com
pany from meeting any of its obligations under this se
tion that he determines would result in the membe
company being in an unsafe or unsound condition.

h. Any member company that does not write it
apportionment share of any quota established by th
commissioner pursuant to subsection b. or c. of this se
tion within the applicable time period shall be preclude
from nonrenewing automobile insurance policies pu
suant to section 26 of [this 1988 amendatory and supple
mentary act] *P.L.1988, c.119 (C.17:29C-7.1)* during th
immediately following 12 month period.

i. In addition to the requirements of subsection a. o
this section, the procedures governing the increase i
voluntary market volume shall:

(1) establish guidelines and criteria for determinin
whether a person is a qualified applicant as defined i
section 15 of P.L.1983, c.65 (C.17:30E-3), and procedure
for the issuance of automobile insurance through th
voluntary market to persons found not to be qualifie
applicants for association coverage, and for the referral o
persons determined not to be eligible for association co
erage to alternative residual market mechanisms;

(2) include provisions ensuring that servicing carriers do not obtain any unfair advantage over other member companies in the selection of qualified applicants and association insureds to be written as voluntary business;

(3) neither prohibit nor require member companies to write association business through association producers of record, provided, however, that where a member company elects not to service such business through the association producer of record, the procedures shall address the manner in which the association shall transfer the business to the member company, and shall establish reasonable compensation in an amount sufficient to offset the actual expenses incurred by the association producer in conjunction with the transfer which shall be paid by the association upon transfer of the business to the member company; and

(4) provide for financial disincentives to applicants who, without good cause, reapply for coverage in the association after being placed in the voluntary market.

FAIRA § 23

17:33B-5. New Jersey automobile insurance guaranty fund

a. There is hereby created within the General Treasury a special nonlapsing fund to be known as the New Jersey Automobile Insurance Guaranty Fund. The State Treasurer shall credit to the fund, in addition to any sums appropriated thereto, all monies designated in subsection b. of this section and collected pursuant to this act on and

after the effective date of this 1990 amendatory and supplementary act. Monies credited to the New Jersey Automobile Insurance Guaranty Fund may be invested in the same manner as assets of the General Fund and any investment earnings on the fund shall accrue to the fund and shall be available subject to the same terms and conditions as other monies in the fund. The State Treasurer may determine the amount of earnings to be credited to the New Jersey Automobile Insurance Guaranty Fund to reflect the average rate of return on the State of New Jersey Cash Management Fund.

b. Monies from the following sources shall be credited by the State Treasurer to the New Jersey Automobile Insurance Guaranty Fund: the revenues attributable to the surtax imposed under section 76 of this 1990 amendatory and supplementary act (C.17:33B-49); the revenues attributable to the tax imposed on premiums earned by the New Jersey Automobile Full Insurance Underwriting Association pursuant to section 34 of P.L.1983, c.65 (C.17:30E-22); that percentage of surcharges collected by the Division of Motor Vehicles on or after October 1, 1991, pursuant to subsection b. of section 6 of P.L.1983, c.65 (C.17:29A-35); monies collected by the Division of Motor Vehicles on or after October 1, 1991, pursuant to section 68 of this 1990 amendatory and supplementary act (C.17:33B-63); monies collected by the State Board of Medical Examiners pursuant to section 63 of this 1990 amendatory and supplementary act (C.17:33B-58); monies collected by the State Board of Chiropractic Examiners pursuant to section 64 of this 1990 amendatory and supplementary act (C.17:33B-59); monies collected by the State Board of Physical Therapy pursuant to section 65 of

this 1990 amendatory and supplementary act (C.17:33B-60); monies collected by the Division of Motor Vehicles pursuant to section 66 of this 1990 amendatory and supplementary act (C.17:33B-61); monies collected by the State Treasurer pursuant to section 67 of this 1990 amendatory and supplementary act (C.17:33B-62); loans made to the fund as provided in subsection c. of this section; and such other income as may be deposited with or otherwise made available to the New Jersey Automobile Full Insurance Underwriting Association on or after October 1, 1991, including monies deposited in the New Jersey Automobile Full Insurance Underwriting Association Auxiliary Fund pursuant to section 5 of P.L.1983, c.320 (C.17:33A-5).

c. (1) The fund shall borrow such monies as are made available by the New Jersey Property-Liability Insurance Guaranty Association pursuant to paragraph (10) of subsection a. of section 8 of P.L.1974, c.17 (C.17:30A-8).

(2) The fund may, upon the approval of the Commissioner of Insurance and pursuant to terms and conditions established by him, borrow monies from any other available source.

d. The monies in the New Jersey Automobile Insurance Guaranty Fund, including interest earnings thereon, are specifically dedicated and shall be utilized exclusively for the costs of the purposes of satisfying the financial obligations of the New Jersey Automobile Full Insurance Underwriting Association, as provided in this 1990 amendatory and supplementary act. Those monies are hereby appropriated for those purposes; provided, however, that

those monies shall be disbursed by the State Treasurer as provided in subsection e. of this section.

e. The trustee appointed pursuant to section 21 of this 1990 amendatory and supplementary act shall prepare a written application for any disbursement of monies from the New Jersey Automobile Insurance Guaranty Fund, specifying the amount of the disbursement, the intended expenditures, and the manner in which such expenditures serve the purposes of the trustee's function and this act. The application shall be submitted to the Commissioner of Insurance for approval. Upon approval by the commissioner, the application shall be forwarded to the State Treasurer for approval. Upon approval by the State Treasurer, he shall disburse monies from the New Jersey Automobile insurance Guaranty Fund to the trustee for disbursement as provided in the approved application.

FAIRA § 24

17:33B-22. Automobile insurance coverage for ineligible persons

Those persons who do not qualify as "eligible persons" as defined in section 25 of this 1990 amendatory and supplementary act but who are in good faith entitled to, but are unable to procure automobile insurance coverage, shall be provided automobile insurance

coverage pursuant to the provisions of section 1 of P.L.1970, c.215 (C.17:29D-1)

FAIRA § 25

17:33B-13. Definitions

As used in sections 25 through 33 of this 1990 amendatory and supplementary act:

* * *

"Eligible person" means a person who is an owner or registrant of an automobile registered in this State or who holds a valid New Jersey driver's license to operate an automobile, but does not include any person:

a. Who, during the three-year period immediately preceding application for, or renewal of, an automobile insurance policy has been convicted pursuant to R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a), or for an offense of a substantially similar nature committed in another jurisdiction; has been convicted of a crime of the first, second or third degree resulting from the use of a motor vehicle; or has been convicted of theft of a motor vehicle;

b. Whose driver's license to operate an automobile is under suspension or revocation;

c. Who has been convicted, within the five-year period immediately preceding application for or renewal of a policy of automobile insurance, of fraud or intent to

defraud involving an insurance claim or an application for insurance; or who has been successfully denied, within the immediately preceding five years, payment by an insurer of a claim in excess of $1,000 under an automobile insurance policy, if there was evidence of fraud or intent to defraud involving the automobile insurance claim or application:

d. Whose policy of automobile insurance has been canceled because of nonpayment of premium or financed premium within the immediately preceding two-year period, unless the premium due on a policy for which application has been made is paid in full before issuance or renewal of the policy:

e. Who fails to obtain or maintain membership or qualification for membership in a club, group, or organization, if membership is a uniform requirement of the insurer as a condition of providing insurance, and if the dues or charges, if any, or other conditions for membership or qualifications for membership are applied uniformly throughout this State, are not expressed as a percentage of the insurance premium, and do not vary with respect to the rating classification of the member or potential member except for the purpose of offering a membership fee to family units. Membership fees, if applicable, may vary in accordance with the amount or type of coverage if the purchase of additional coverage, either as to type or amount, is not a condition for reduction of dues or fees;

f. Whose driving record for the three year period immediately preceding application for or renewal of a policy of automobile insurance has an accumulation of

automobile insurance eligibility points as determined under the schedule promulgated by the commissioner pursuant to section 26 of this act; or

g. Who possesses such other risk factors as determined to be relevant by rule or regulation of the commissioner.

FAIRA § 26

17:33B-14. Schedule of automobile insurance eligibility points

The commissioner shall, within 90 days of the effective date of this act, promulgate a schedule of automobile insurance eligibility points by rule or regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The schedule shall assess a point valuation to driving experience related violations and shall include assessments for violations of lawful speed limits within such increments as determined by the commissioner, other moving violations, and at-fault accidents. For the purposes of this section, an "at-fault accident" means an at-fault accident which results in payment by insurer of at least a $500 claim.

FAIRA § 27(b)

17:33B-15. Coverage for eligible persons: refusal to insure or renew, or limitation of coverage, prohibited

* * *

b. No insurer shall refuse to insure, refuse to renew, or limit coverage available for automobile insurance to an eligible person who meets its underwriting rules as filed with and approved by the commissioner in accordance with the provisions of section 7 of P.L.1988, c.156 (C.17:29A-46). The commissioner may suspend, revoke or otherwise terminate the certificate of authority to transact automobile insurance business in this State of any insurer who violates the provisions of this section.

FAIRA § 37

37. Section 6 of P.L.1988, c.156 (C.17:29A-45) is amended to read as follows:

6. a. Notwithstanding the provisions of P.L. 1944, c.27 (C.17:29A-1 et seq.) to the contrary, every insurer transacting or proposing to transact private passenger automobile insurance may file rating plans in the voluntary market for standard risks, or non-standard risks, or both. [A rating plan may include a good driver discount plan.] Within 30 days following the effective date of this 1988 amendatory and supplementary act, every insurer writing private passenger automobile insurance in this

State which intends to write coverage in the voluntary market using more than one rate level shall file with the commissioner the rates and underwriting rules which are applicable to each rate level.

b. An insurer which intends to use more than one rating plan and which has a rating plan on file as of the effective date of this 1988 amendatory and supplementary act, may make an initial filing for the additional rating plan in which the modification of the plan on file is expressed as a percentage increase or decrease of the existing rate level.

c. Notwithstanding any other law to the contrary any rates filed pursuant to subsection b. of this section shall be deemed to be approved if not disapproved by the commissioner within 60 days. Any subsequent modification of any rate level other than that provided for in section 5 of this 1988 amendatory and supplementary act, or any initial rate level which is not expressed as percentage increase or decrease of an existing rate level as provided for in this section, shall be subject to the provisions of P.L.1944, c.27 (C.17:29A-1 et seq.).

d. Any limitation on rates established by the provisions of section 7 of P.L.1983, c.65 (C.17:29A-36) shall apply separately to each rate level established pursuant to subsection a. of this section.

e. Every insurer shall maintain such data for each level as may be required by the commissioner by regulation for the purpose of determining excess profits pursuant to the provisions of P.L.1988, c.118 (C.17:29A-5.6 et seq.).

f. No more than 15 percent of the aggregate number of private passenger automobile non-fleet exposures being written in the total private passenger automobile insurance market in this State shall be provided through the non-standard voluntary market as defined by rule or regulation of the commissioner adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). If the commissioner certifies that 15 percent or more of the aggregate number of private passenger automobile non-fleet exposures being written in the total private passenger automobile insurance market in this State are insured in the non-standard voluntary market, no insurer transacting automobile insurance in this State shall refuse to issue or renew an automobile insurance policy in the voluntary market for an eligible person as defined in section 25 of P.L. , c. (C.) (now pending in the Legislature as this bill) until such time that the commissioner certifies that the non-standard market comprises less than 15 percent of the aggregate number of private passenger automobile non-fleet exposures being written in the total private passenger automobile insurance market in this State.

g. Notwithstanding any provision of this or any other section of law to the contrary, no insurer shall file, nor shall the commissioner approve, any rates filed for non-standard risks in the voluntary market in excess of 135 percent of the cost of private passenger automobile insurance in the voluntary market in this State as determined by the commissioner.

h. The commissioner shall monitor and report to the Legislature, on March 1, 1992, and annually thereafter, the number of private passenger automobile non-fleet exposures insured in the standard market on December 31 of the preceding calendar year and the number of such exposures insured in

the non-standard market on December 31 of the preceding calendar year.

FAIRA § 38

38. Section 7 of P.L.1988, c.156 (C.17:29A-46) is amended to read as follows:

7. a. Insurers shall put in writing all underwriting rules applicable to each rate level utilized pursuant to section 6 of this 1988 amendatory and supplementary act. No underwriting rule shall operate in such a manner as to assign a risk to a rating plan on the basis of the territory in which the insured resides. An insurer which knowingly fails to transact automobile insurance consistently with its underwriting rules shall be subject to a fine of not less than $500.00 for each violation.

b. All underwriting rules applicable to each rate level as provided for in section 6 of this 1988 amendatory and supplementary act shall be filed with the commissioner and shall be subject to his prior approval. All underwriting rules shall be subject to public inspection. Insurers shall apply their underwriting rules uniformly and without exception throughout the State, so that every applicant or insured conforming with the underwriting rules will be insured or renewed, and so that every applicant or insured not conforming with the underwriting rules will be refused insurance or be nonrenewed.

FAIRA § 39

17:33B-25. Refusal to issue or renew policy prohibited

Notwithstanding the provisions of section 27 of this 1990 amendatory and supplementary act, section 2 of P.L.1968, c.158 (C.17:29C-7), section 26 of P.L.1988, c.119 (C.17:29C-7.1) or any other section of law to the contrary, if the plan for automobile insurance established pursuant to section 1 of P.L.1970, c.215, (C.17:29D-1), is not accepting new applications for coverage pursuant to subsection d. of that section, no insurer transacting automobile insurance in this State shall refuse to issue or renew any private passenger automobile insurance policy in this State.

FAIRA § 40

17:33B-32. Factors used in determining rates and premiums

a. Notwithstanding any other provision of law to the contrary, rates and premiums for private passenger automobile insurance shall be determined by the application of the following factors in decreasing order of importance:

(1) The insured's driving safety record, including motor vehicle points as provided in Title 39 of the Revised Statutes, at-fault accidents and convictions pursuant to R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a) or offenses of a substantially similar nature committed in another jurisdiction;

(2) The number of miles the insured drives annually;

(3) The number of years of driving experience the insured has had;

(4) The type of private passenger automobile driven; and

(5) Such other factors as the Commissioner of Insurance may adopt by regulation which have a substantial relationship to the risk of loss. The regulations shall also set forth the respective weight to be given to each factor in determining automobile insurance rates and premiums.

b. Notwithstanding any provision of subsection a. of this section to the contrary, rates and premiums for private passenger automobile insurance shall not be determined, in whole or in part, directly or indirectly, upon the age, sex or marital status of the persons insured.

c. The commissioner shall, no later than January 1, 1992, promulgate a plan providing for the implementation of the provisions of subsections a. and b. of this section which shall take effect no later than one year following the date of promulgation.

FAIRA § 72

17:33B-30. Foreign companies; surrender of certificate; plan for withdrawal

An insurance company of another state or foreign country authorized under chapter 32 of Title 17 of the Revised Statutes to transact insurance business in this State may surrender to the commissioner its certificate of

authority and thereafter cease to transact insurance in this State, or discontinue the writing or renewal of one or more kinds of insurance specified in the certificate of authority, only after the submission of a plan which provides for an orderly withdrawal from the market and a minimization of the impact of the surrender or discontinuance on the public generally and on the company's policyholders in this State. The plan shall be approved by the commissioner before the withdrawal or discontinuance takes effect. In reviewing a plan for withdrawal under this section, the commissioner shall consider, and may require as a condition of approval, whether some or all other certificates of authority issued pursuant to chapter 17 or 32 of Title 17 of the Revised Statutes held by the company of by other companies in the same holding company as the company submitting the plan should be surrendered. The certificate of authority of the company shall be deemed to continue in effect until the provisions of the approved plan have been carried out. The provisions of this section shall apply to any request for withdrawal, surrender or discontinuance filed on or after January 25, 1990.

FAIRA § 74

74. Section 8 of P.L.1974, c.17 (C.17:30A-8) is amended to read as follows:

8 a. The association shall:

* * *

(9) Assess member insurers in amounts necessary to make loans pursuant to paragraph (10) of this subsection. [The] Estimated assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment bears to the net direct written premiums of all member insurers for the calendar year preceding the assessment with actual assessments adjusted in the succeeding year based on the proportion that the insurer's net direct written premiums in the year of assessment bears to the net direct written premiums of all member insurers for that year. [However, the association may, subject to the approval of the commissioner, exempt, abate or defer, in whole or in part the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. In the event an assessment against a member insurer is exempted, abated, or deferred, in whole or in part, because of the limitations set forth in this paragraph, the amount by which such assessment is exempted, abated, or deferred, shall be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this paragraph.]

(10) Make loans in the amount of $160 million per calendar year, beginning in calendar year 1990, to the New Jersey Automobile Insurance Guaranty Fund created pursuant to section 23 of P.L. ___, c.___ (C. ___) (now pending in the Legislature as this bill), except that no

loan shall be made pursuant to this paragraph after December 31, 1997.

* * *

FAIRA § 75

75. Section 16 of P.L.1974, c.17 (C.17:30A-16) is amended to read as follows:

16. a. The commissioner shall adopt rules permitting member insurers to recoup over a reasonable length of time, a sum reasonably calculated to recoup assessments paid by the member insurer [under this act] *pursuant to paragraph (3) of subsection a. of section 8 of P.L.1974, c.17 (C.17:30A-8)* by way of a surcharge on premiums charged for insurance policies to which this act applies [; b. the] . *The* amount of any surcharge shall be determined by the commissioner [; c. the] . *The* commissioner may permit an insurer to omit collection of the surcharge from its insureds when the expense of collecting the surcharge would exceed the amount of the surcharge, provided that nothing in this [section] *subsection* shall relieve the insurer of its obligation to remit the amount of surcharge otherwise collectible.

b. No member insurer shall impose a surcharge on the premiums of any policy to recoup assessments paid pursuant to paragraph (9) of subsection a. of section 8 of P.L.1974, c.17 (C.17:30A-8).

FAIRA § 76

17:33B-49. Annual surtax on premiums; payment

a. in addition to the tax on net premiums paid pursuant to section 1 of P.L.1945, c.132 (C.54:18A-1), each taxpayer under that section shall pay to the Director of the Division of Taxation an annual surtax at a rate of 5%, or a rate adjusted pursuant to section 77 of this 1990 amendatory and supplementary act, on all taxable premiums collected in this State, except premiums collected by the New Jersey Automobile Full Insurance Underwriting Association *created pursuant to section 16 of P.L. 1983, c.65 (C.17:30E-4), and premiums collected by the Market Transition Facility created pursuant to section 88 of P.L.1990, c.8 (C.17:33B-11)*, in calendar years 1990, 1991 and 1992 for contracts of automobile insurance, notwithstanding section 6 of P.L.1945, c.132 (C.54:18A-6). The surtax shall be administered pursuant to the provisions of P.L.1945, c.132 (C.54:18A-1 et seq.), except that if any provision of that act is in conflict with a specific provision of this 1990 amendatory and supplementary act, the provision or provisions of this 1990 amendatory and supplementary act shall govern.

b. For the purposes of sections 76 through 78 of this 1990 amendatory and supplementary act:

"Automobile" means a private passenger automobile of a private passenger or station wagon type that is owned or hired, and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; a motor vehicle with a pickup body, a delivery sedan, a van, or a panel truck or a camper type vehicle used for recreational purposes, owned by an individual

or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch and otherwise meets the definition contained in this section, shall be considered a private passenger automobile owned by two or more relative resident in the same household; and

"Automobile insurance" means direct insurance against injury or damage, including the legal liability therefor, arising out of the ownership, operation, maintenance or use of an automobile, including, but not limited to, personal injury protection insurance, bodily injury liability insurance, property damage liability insurance, physical damage insurance and uninsured and underinsured motorist insurance.

c. Each taxpayer shall:

(1) on or before the first day of the third month following enactment of this 1990 amendatory and supplementary act make an installment payment of surtax due under subsection a. of this section in an amount equal to one half of the surtax estimated to be due for taxable premiums collected in this State in calendar year 1990 is the surtax rate at the time of the payment was imposed for the entire year; and

(2) on or before the first day of the sixth month following enactment of this 1990 amendatory and supplementary act, make an installment payment of surtax due under subsection a. of this section in an amount equal to one half of the surtax estimated to be due for taxable

premiums collected in this State in calendar year 1990 if the surtax rate at the time of the payment was imposed for the entire year; provided however, that no installment payment shall be due if the payment date of such installment pursuant to this subsection falls on or after February 1, 1991.

In the calculation of the tax due in accordance with subsection a. of this section, a taxpayer shall be entitled to a credit in the amount of the tax paid under this subsection as a partial payment and shall be entitled to the return of any amount so paid which is in excess of the total amount payable in accordance with this section.

d. Failure to pay any installment payment required pursuant to subsection c. of this section shall constitute a deficiency, and there shall be added to the tax for the calendar year interest on the amount of underpayment as provided in the State Tax Uniform Procedure Law, R.S. 54:48-1 et seq., for the period of the underpayment.

The amount of underpayment shall be the excess of the amount of the installment payment which would be required to be paid if the installment payment were equal to 45% of the surtax which would be shown on the return for the year if the surtax rate at the time of the payment were imposed for the entire year, or if no return was filed, 45% of the tax for that year, over the amount, if any, of the installment payment paid on or before the last date prescribed for payment.

For purposes of this subsection, the period of the underpayment shall run from the date the installment payment was required to be paid to the earlier of the date on which the surtax is due pursuant to subsection a. of

this section or, with respect to any portion of the underpayment, the date on which that portion is paid.

For purposes of this subsection, a payment of any installment payment shall be considered a payment of any previous underpayment only to the extent that such payment exceeds the amount of the installment payment determined under this subsection for that installment payment.

e. All revenues collected from the surtax imposed pursuant to this section, less any refunds paid pursuant to subsection d. of section 77 of this 1990 amendatory and supplementary act, shall be credited by the State Treasurer to the New Jersey Automobile Insurance Guaranty Fund, created pursuant to section 23 of this 1990 amendatory and supplementary act.

FAIRA § 77

17:33B-50. Adjustment of rate of surtax; estimate of revenues; refund of excess

a. The Director of the Division of Taxation is hereby authorized to adjust the rate of the surtax imposed pursuant to section 76 of this 1990 amendatory and supplementary act, for any of the calendar years in which the surtax is imposed, as provided in this section.

b. The Director of the Division of Taxation, in consultation with the Commissioner of Insurance, shall, on or before the first day of the second month following enactment of this 1990 amendatory and supplementary

act, prepare an estimate of the revenues anticipated to be collected from the surtax imposed pursuant to section 76 of this 1990 amendatory and supplementary act, at the rate established thereby, and credited to the New Jersey Automobile Insurance Guaranty Fund, for each of the three calendar years in which the surtax is imposed. These estimates shall be reviewed and, if appropriate, revised, on or before the first day of the month immediately preceding the due date for the second installment payment for the first calendar year in which the surtax is imposed and each subsequent installment payment and each final payment required to be made pursuant to section 76 of this 1990 amendatory and supplementary act. Such review and revision shall be based upon information available to the director and the commissioner, including actual surtax collections as reflected in final payments.

c. At any time that the estimates prepared and revised pursuant to subsection b. of this section reflect total estimated surtax revenues in excess of, or significantly less than, $300,000,000 for the three calendar years in which the surtax is imposed, the director shall provide that the surtax be imposed at a different rate, such that the total estimated revenues are as near as possible to, but do not exceed, $300,000,000, provided, however, that the rate shall not exceed 5%. That different surtax rate shall be imposed on premiums collected in the first calendar year for which final returns and final payments have not yet been made and, subject to the director's determination, may be reflected in installment payments which have not yet been made.

d. On or before April 1, 1993, the director shall make a final determination of the total amount of revenues collected under the surtax imposed pursuant to section 76 of this 1990 amendatory and supplementary act for the three calendar years in which the surtax is imposed. The director shall refund any such revenues collected in excess of $300,000,000 to taxpayers in proportion to each taxpayer's share of total surtax payments made for the three calendar years.

FAIRA § 78

17:33B-51. Policyholders not to pay surtax

The Commissioner of Insurance shall take such action as is necessary to ensure that private passenger automobile insurance policyholders shall not pay for the surtax imposed pursuant to section 76 of this 1990 amendatory and supplementary act.

FAIRA § 88

17:33B-11. Market Transition Facility; advisory board; membership; plan of operation; apportionment of profits and losses

a. There is created a Market Transition Facility to be operated by the Commissioner of Insurance pursuant to the provisions of this section. Every insurer authorized to transact automobile insurance in this State shall be a

member of the facility and shall share in its profits and losses as provided by the commissioner pursuant to the provisions of subsection d. of this section.

b. The commissioner shall, within 30 days of the effective date of this 1990 amendatory and supplementary act, appoint a Market Transition Facility Advisory Board which shall be comprised of six members, one of whom shall represent member companies organized on a mutual basis, one of whom shall represent member companies organized on a stock basis, one of whom shall represent servicing carriers, one of whom shall represent insurance producers, one of whom shall be a qualified actuary and one of whom shall represent the public. Advisory board members shall serve for the duration of the facility or until such time as their successor is appointed. Advisory board members shall not be compensated for their services but shall be reimbursed by the facility for any necessary and reasonable expenses incurred in performance of their duties as members of the advisory board.

c. The facility shall arrange for the issuance and renewal of automobile insurance policies for the period commencing October 1, 1990 and ending September 30, 1992 pursuant to a plan of operation promulgated by the commissioner in consultation with the advisory board. The facility shall not issue or renew any policies of automobile insurance on or after October 1, 1992. The plan shall provide:

(1) The applicable levels of coverage available through the facility;

(2) That the premiums payable on policies issued by the facility shall be based on rates applicable to persons insured by the New Jersey Automobile Full Insurance Underwriting Association on September 30, 1990 but shall not incorporate the rates applicable under section 25 of P.L.1983, c.65 (C.17:30E-13) and section 22 of P.L.1988, c.119 (C.17:30E-13.1). However, the applicable rates for those insureds who do not qualify as eligible persons as provided in section 25 of this 1990 amendatory and supplementary act shall be those set by the plan for the provision of automobile insurance established pursuant to section 1 of P.L.1970, c.215 (C.17:29D-1);

(3) Procedures for the filing and approval of changes in rates applicable to policies issued or renewed by the facility;

(4) For the insurance and renewal of automobile insurance through servicing carriers under contract with the New Jersey Automobile Full Insurance Underwriting Association pursuant to the provisions of section 24 of P.L.1983, c.65 (C.17:30E-12), utilizing, at the discretion of the commissioner, the staff of the association;

(5) Procedures for the depopulation of the facility which shall provide that: on or after April 1, 1991 no more than 29% of the aggregate number of private passenger non-fleet exposures written in this State shall be written by the facility and the New Jersey Automobile Full Insurance Underwriting Association created by P.L.1983, c.65 (C.17:30E-1 et seq.); on or after October 1, 1991 no more than 20% of the aggregate number of private passenger non-fleet exposures written in this State shall be written by the facility; on or after April 1, 1992 no

more than 10% of the aggregate number of private passenger non-fleet exposures written in this State shall be written by the facility; and on or after October 1, 1992, 0% of the aggregate number of private passenger non-fleet exposures written in this State shall be written by the facility. In establishing the quotas set forth above, the plan shall prescribe the number of voluntary market exposures which shall be written during each six month period set forth in this paragraph in a manner consistent with the apportionment procedure established pursuant to subsection a. of section 26 of P.L.1983, c.65 (C.17:30E-14). In the event that any of the quotas established pursuant to this paragraph have not been met by the end of the applicable period, the commissioner shall direct the facility to assign the balance of the exposures needed to meet the applicable quota to member companies pursuant to the apportionment procedure. A member company which exceeds its apportionment share for any six month period set forth in this paragraph shall receive credit for the excess against the following period's obligation. The commissioner may excuse a member company from meeting its obligations under the depopulation procedures if he determines that the company would be placed in an unsafe or unsound condition;

(6) A schedule for the payment of premiums on an installment basis. Any installment payment schedule for policies issued for one year period shall provide for installment payments during a period of not less than nine months;

(7) That no policy issued by the facility may be cancelled for nonpayment of premium unless written notice is provided at least 15 days prior to the effective

date of cancellation accompanied by the reason for cancellation. Notice shall be provided to the named insured and the producer of record at their last known addresses;

(8) Provided for notification of the named insured and the producer of record at their last known addresses no later than 15 days after the nonrenewal of a facility policy of such nonrenewal; and

(9) Such other provisions as are deemed necessary for the operation of the facility.

d. The commissioner shall apportion any profits or losses of the facility among member companies based on each company's apportionment share as determined for purposes of depopulation pursuant to subsection a. of section 26 of P.L.1983, c.65 (C.17:30E-14).

e. The facility shall be subject to the provisions of P.L.1945, c.132 (C.54:18A-1 et seq.).

New Jersey Statutes Annotated:

N.J.S.A. 17:29A-4. Rates; establishment; considerations

Every rating organization, and every insurer which makes its own rates, shall make rates that are not unreasonably high or inadequate for the safety and soundness of the insurer, and which do not unfairly discriminate between risks in this State involving essentially the same hazards and expense elements, and shall, in rate-making, and in making rating systems:

(a) Adopt basic classifications, which shall be used as the basis of all manual, minimum, class, schedule, experience or merit rates;

(b) Adopt reasonable standards for construction, for protective facilities, and for other conditions that materially affect the hazard or peril, which shall be applied in the determination or fixing of rates;

(c) Give consideration to past and prospective loss experience, including where pertinent, the conflagration and catastrophe hazards, if any, both within and without the State; to all factors reasonably related to the kind of insurance involved; to a reasonable profit for the insurer; and, in the case of participating insurers, to policyholders' dividends. In the case of fire insurance, consideration shall be given to the latest available experience of the fire insurance business during a period of not less than 5 years preceding the year in which rates are made or revised;

(d) Give a rate reduction, to be approved by the commissioner, for fire insurance on structures equipped with operative smoke detection devices of a design approved by the Commissioner of Insurance.

N.J.S.A. 17:29A-14. Alteration of rates: procedure

a. With regard to all property and casualty lines, a filer may, from time to time, alter, supplement, or amend its rates, rating systems, or any part thereof, by filing

with the commissioner copies of such alterations, supplements, or amendments, together with a statement of the reason or reasons for such alteration, supplement, or amendment, in a manner and with such information as may be required by the commissioner. If such alteration, supplement, or amendment shall have the effect of increasing or decreasing rates, the commissioner shall determine whether the rates as altered thereby are reasonable, adequate, and not unfairly discriminatory. If the commissioner shall determine that the rates as so altered are not unreasonably high, or inadequate, or unfairly discriminatory, he shall make an order approving them. If he shall find that the rates as altered are unreasonable, inadequate, or unfairly discriminatory, he shall issue an order disapproving such alteration, supplement or amendment.

b. Deleted by amendment. P.L.1984, c.1

c. If an insurer or rating organization files a proposed alteration, supplement or amendment to its rating system, or any part thereof, which would result in a change in rates, the commissioner may, or upon the request of the filer or the Public Advocate shall, certify the matter for a hearing. The hearing shall, at the commissioner's discretion, be conducted by himself, by a person appointed by the commissioner pursuant to section 26 of P.L.1944, c.27 (C.17:29A-26), or by the Office of Administrative Law, created by P.L.1978, c.67 (C.52:14F-1 et seq.), as a contested case. The following requirements shall apply to the hearing:

(1) The hearing shall commence within 30 days of the date of the request or decision that a hearing is to be

held. The hearing shall be held on consecutive working days, except that the commissioner may, for good cause, waive the consecutive working day requirement. If the hearing is conducted by an administrative law judge, the administrative law judge shall submit his findings and recommendations to the commissioner within 30 days of the close of the hearing. The commissioner may, for good cause, extend the time within which the administrative law judge shall submit his findings and recommendations by not more than 30 days. A decision shall be rendered by the commission not later than 60 days, or, if he has granted a 30 day extension, not later than 90 days, from the close of the hearing. A filing shall be deemed to be approved unless rejected or modified by the commissioner within the time period provided therein.

(2) The commissioner, or the Director of the Office of Administrative Law, as appropriate, shall notify all interested parties, including the Public Advocate on behalf of insurance consumers, if the date set for commencement of the hearing, on the date of the filing of the request for a hearing, or within 10 days of the decision that a hearing is to be held.

(3) The insurer or rating organization making a filing on which a hearing is held shall bear the costs of the hearing.

(4) The commissioner may promulgate rules and regulations (a) to establish standards for the submission of proposed filings, amendments, additions, deletions and alterations to the rating system of filers, which may include forms to be submitted by each filer; and (b)

making such other provisions as he deems necessary for effective implementation of this act.

d. Deleted by amendment. P.L.1984, c.1

e. In order to meet, as closely as possible, the deadlines in section 17 of P.L.1983, c.362 (C.39:6A-23) for provision of notice of available optional automobile insurance coverages pursuant to section 13 of P.L.1983, c.362 (C.39:6A-4.3) and section 8 of P.L.1972, c.70 (C.39:6A-8), and to implement these coverages, the commissioner may require the use of rates, fixed by him in advance of any hearing, for deductible, exclusion, setoff and tort limitation options, on an interim basis, subject to a hearing and to a provision for subsequent adjustment of the rates, by means of a debit, credit or refund retroactive to the effective date of the interim rates. The public hearing on initial rates applicable to the coverages available under section 13 of P.L.1983, c.362 (C.39:6A-4.3) and section 8 of P.L.1972, c.70 (C.39:6A-8) shall not be limited by the provisions of subsection c. of this section governing changes in previously approved rates or rating systems.

N.J.S.A. 17:29A-35. Merit rating accident surcharge for private passenger automobiles; plan; suspension of license; disposition of funds; amount of surcharge; rules and regulations

a. A merit rating accident surcharge system for private passenger automobiles may be used both in the voluntary market and by the New Jersey Automobile Full Insurance Underwriting Association created pursuant to

section 16 of P.L.1983, c.65 (C.17:30E-4). No surcharges shall be imposed on or after the operative date of this act, unless there is an at-fault accident within a three year period immediately preceding the effective date of coverage which results in payment by the insurer of at least a $300.00 claim. All moneys collected under this subsection shall be retained by the insurer assessing the surcharge. Accident surcharges shall be imposed for a three year period and shall, for each filer, be uniform on a Statewide basis without regard to classification or territory.

b. There is created a New Jersey Merit Rating Plan which shall apply to all drivers and shall include, but not be limited to, the following provisions:

(1)(a) Plan surcharges shall be levied, beginning on or after January 1, 1984, by the Division of Motor Vehicles on any driver who has accumulated, within the immediately preceding three year period, beginning on or after February 10, 1983, six or more motor vehicle points, as provided in Title 39 of the Revised Statutes, exclusive of any points for convictions for which surcharges are levied under paragraph (2) of this subsection; except that the allowance for a reduction of points in title 39 of the Revised Statutes shall not apply for the purpose of determining surcharges under this paragraph. Surcharges shall be levied for each year in which the driver possesses six or more points. Surcharges assessed pursuant to this paragraph shall be not less than $100.00 for six points, and not less than $25.00 for each additional point. The commissioner may increase the amount of surcharges as he deems necessary to effectuate the purposes of subsection d. of this section and P.L.1983, c.65 (C.17:29A-33 et al.), and may, pursuant to regulation, permit the deferral

of all or part of any surcharges authorized by this subsection until the end of the policy term of an automobile insurance policy with an effective date prior to January 1, 1984, upon presentation of appropriate evidence that an insured has already paid an equivalent surcharge arising from the same motor vehicle violation or conviction.

(b) (Deleted by amendment, P.L.1984, c.1.)

(2) Plan surcharges shall be levied for convictions (a) under R.S. 39:4-50 for violations occurring on or after February 10, 1983, and (b) under section 2 of P.L.1981, c.512 (C.39:4-50.4a), or for offenses committed in other jurisdictions of a substantially similar nature to those under R.S. 39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a), for violations occurring on or after January 26, 1984. Surcharges under this paragraph shall be levied annually for a three year period, and shall be not less than $1,000.00 per year for each of the first two convictions, and not less than $1,500.00 per year for the third conviction occurring within a three year period. If a driver is convicted under both R.S.39:4-50 and section 2 of P.L.1981, c.512 (C.39:4-50.4a) for offenses arising out of the same incident, the driver shall be assessed only one surcharge for the two offenses. The commissioner may increase the amount of surcharges as he deems necessary to effectuate the purposes of subsection d. of this section and P.L.1983, c.65 (C.17:29A-33 et al.), and may, pursuant to regulation, permit the deferral of all or any part of these surcharges as provided in paragraph (1)(a) of this subsection.

If, upon written notification from the Division of Motor Vehicles, mailed to the last address of record with the division, a driver fails to pay a surcharge levied

under this subsection, the license of the driver shall be suspended forthwith until the surcharge is paid to the Division of Motor Vehicles; except that upon satisfactory showing of indigency, the Division of Motor Vehicles may authorize payment of the surcharge on an installment basis over a period not to exceed 10 months.

For the purposes of this subparagraph, "indigency" shall be defined in rules and regulations promulgated by the Director of the Division of Motor Vehicles.

All moneys collectible under this subsection shall be billed and collected by the Division of Motor Vehicles. Of the moneys collected, 10%, or the actual cost of administering the collection of the surcharge, whichever is less, shall be retained by the Division of Motor Vehicles and turned over to the State Treasury for deposit in a special account to be used by the Division of Motor Vehicles, as may be necessary, to modernize its operations and improve its effectiveness and efficiency in order to discharge its statutory obligations and the remainder shall be remitted to the New Jersey Automobile Full Insurance Underwriting Association. Any moneys in the special account at the end of a fiscal year shall be transferred to the General Fund for use for general State purposes. Moneys shall be appropriated annually to the special account.

(3) In addition to any other authority provided in P.L.1983, c.65 (C.17:29A-33 et al.), the commissioner, after consultation with the Director of the Division of Motor Vehicles, is specifically authorized (a) to increase the dollar amount of the surcharges for motor vehicle violations or convictions, (b) to impose, in accordance with paragraph (1)(a) of this subsection, surcharges for motor

vehicle violations or convictions for which motor vehicle points are not assessed under Title 39 of the Revised Statutes, or (c) to reduce the number of points for which surcharges may be assessed below the level provided in paragraph (1)(a) of this subsection, except that the dollar amount of all surcharges levied under the New Jersey Merit Rating Plan shall be uniform on a Statewide basis for each filer, without regard to classification or territory. Surcharges adopted by the commissioner on or after January 1, 1984 for motor vehicle violations or convictions for which motor vehicle points are not assessable under Title 39 of the Revised Statutes shall not be retroactively applied but shall take effect on the date of the New Jersey Register in which notice of adoption appears or the effective date set forth in that notice, whichever is later.

c. No motor vehicle violation surcharges shall be levied on an automobile insurance policy issued or renewed on or after January 1, 1984, except in accordance with the New Jersey Merit Rating Plan, and all surcharges levied thereunder shall be assessed, collected and distributed in accordance with subsection b. of this section.

d. The dollar amount of all motor vehicle conviction surcharges shall be at least equivalent to the differential between the rates charged to insureds as promulgated by the rating bureau which files rates for the greatest number of insurers in the voluntary private passenger automobile insurance market in this State and the Supplement I rates in use as of December 31, 1982 by the automobile insurance plan established pursuant to P.L.1970, c.215 (C.17:29D-1), and the amount collectible under the motor vehicle conviction surcharge system in use by the automobile insurance plan established pursuant to P.L.1970, c.215 (C.17:29D-1 et seq.) prior to the

implementation of this act; except that in the first year of operation of the New Jersey Automobile Full Insurance Underwriting Association, the dollar amount of all motor vehicle surcharges shall be sufficient to eliminate the need for imposition of a residual market equalization charge authorized under section 20 of P.L.1983, c.65 (C.17:30E-8).

e. The Commissioner of Insurance and the Director of the Division of Motor Vehicles as may be appropriate, shall adopt any rules and regulations necessary or appropriate to effectuate the purposes of this section.

N.J.S.A. 17:29A-36. Filing for automobile insurance rate making

Any filing made for the purpose of automobile insurance rate making shall indicate the actual rate needs of the filer, provided, however, that (a) each filer's rate classification definitions, as used by that filer, shall be uniform Statewide; (b) the automobile insurance rate charged an insured shall not exceed two and one-half times the filer's territorial base rate for each coverage, exclusive of driving record surcharges and discounts; and (c) the automobile insurance rate for the base class in any territory for any filer shall not exceed 1.35 times the filer's Statewide average base rate for each coverage, exclusive of driving record surcharge and discounts. The automobile insurance rate of an automobile whose principal operator is 65 years of age or older shall not exceed one and one-quarter times the Statewide average rate for principal operators 65 years of age or older for each

coverage, exclusive of driving record surcharges and discounts; provided, however, that no filer shall increase rates for principal operators 65 years of age or older as a result of the implementation of this section unless more than 50% of its insureds are principal operators 65 years of age or older.

As used in this section, base rate means the automobile insurance rate charged for an automobile that is not used in business and not used in going to and from work except for the going to and from work distance included in the pleasure use classification of the filer, and where there is no youthful operator, as defined in the filer's classification system. The base rate class shall not include automobiles to which discounts apply under the filer's classification system, including, but not limited to, farmer's and senior citizen's automobiles.

The provisions of this section shall be implemented after the implementation of the provisions of subsection a. of section 8 of this act.

N.J.S.A. 17:29A-44. Maximum rates

a. Beginning July 1, 1989, a filer may charge rates for private passenger automobile insurance in the voluntary market which are not in excess of the following:

(1) For private passenger automobile personal injury protection coverage, residual bodily injury and property damage insurance, the maximum permissible annual rate increase applicable to each rate level utilized

by an insurer in the voluntary market pursuant to section 6 of P.L.1988, c.156 (C.17:29A-45) shall be a Statewide average rate change of not more than the last published increase in the medical care services components of the national Consumer Price Index, all urban consumers, U.S. city average, plus three percentage points.

(2) For private passenger automobile physical damage coverage, the maximum permissible annual rate increase applicable to each rate level utilized by an insurer in the voluntary market pursuant to section 6 of P.L.1988, c.156 (C.17:29A-45) shall be a Statewide average rate change of not more than the last published increase in the automobile maintenance and repair components of the national Consumer Price Index, U.S. city average, plus three percentage points.

b. For the purposes of this section, "Statewide average rate change" means the total Statewide premium for all coverages at the rates in effect at the time of the filing for each rate level.

c. Any change in excess of the rate changes permitted by paragraphs (1) and (2) of subsection a. shall be subject to the provisions of P.L.1944, c.27 (C.17:29A-1 et seq.).

d. If, at any time, the commissioner believes that an increase in either or both of the published indices will produce rate levels which are excessive, he may modify the Statewide average rate change which may be used pursuant to this section.

e. A filer may implement a change in rate level, pursuant to subsection a. of this section, in whole or in part, in a single or in multiple filings by making an informational filing with the commissioner in a manner and form approved by the commissioner. The filing shall include a statement of the reason or reasons for the change in rate level, including, but not limited to, the claim and expense experience of the individual filer.

f. Other than filings made pursuant to subsection c. of this section, neither the provisions of subsection c. of section 14 of P.L.1944, c.27 (C.17:29A-14), nor the provisions of section 19 of P.L.1974, c.27 (C.52:27E-18), shall apply to any filing made pursuant to this section. However, the commissioner shall provide a copy of any filing made or other information provided by a filer pursuant to the provisions of this section to the Department of the Public Advocate, Division of Rate Counsel. The Public Advocate may challenge a rate change implemented pursuant to subsection a. of this section after the effective date of the rate change by filing such challenge in writing with the commissioner within 30 days of the effective date of the rate change. The commissioner shall hear the matter on an expedited basis and shall render a final determination within six months of the date of filing. The commissioner may, for good cause, extend this six-month period up to an additional three months. If the Public Advocate prevails, the commissioner shall reduce or rescind the rate change as appropriate. If the commissioner reduces or rescinds a rate change as a result of a challenge by the Public Advocate filed pursuant to the provisions of this subsection, the filer shall bear the cost

of the reasonable expenses incurred by the Public Advocate in maintaining the challenge.

g. The Commissioner shall monitor the implementation and use of flex rating pursuant to this section and shall report his findings to the Senate Labor, Industry and Professions Committee and the Assembly Insurance Committee, or their successors, including any legislative proposals, no later than July 1, 1992. This report shall provide an evaluation of the use of this rating mechanism and its impact on the availability and affordability of private passenger automobile insurance in this State and the depopulation of the New Jersey Automobile Full Insurance Underwriting Association and shall include any legislative proposals or other recommendations of the commissioner.

N.J.S.A. 17:29C-7.1. Refusal to renew policy with coverage under provisions of Automobile Reparation Reform Act; conditions

a. Notwithstanding the provisions of section 3 of P.L.1972, c.70 (C.39:6A-3), a licensed insurer may, in accordance with subsections b. and c. of this section, refuse to renew a policy of private passenger automobile insurance that provides coverage required to be maintained pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.).

b. For each calendar year period, an insurer may issue notices of intention not to renew an automobile insurance policy in the voluntary market in an amount not to exceed 2% of the total number of voluntary market automobile insurance policies of the insurer, rounded to the nearest whole number, which are in force at the end

of the previous calendar year in each of the insurer's rating territories in use in this State.

c. For every two newly insured automobiles which an insurer voluntarily writes in each territory during each calendar year period, the insurer shall be permitted to refuse to renew one additional policy of automobile insurance in that territory in excess of the 2% limitation established by subsection b. of this section, subject to a fair and nondiscriminatory formula developed by rule or regulation of the commissioner. For the purposes of this section, "voluntarily writes" shall not include any exposure voluntarily written by or assigned to an insurer to meet any quota established pursuant to section 26 of P.L.1983, c.65 (C.17:30E-14).

d. The provisions of this section shall not apply to any cancellation made pursuant to subsection (A) of section 2 of P.L.1968, c.158 (C.17:29C-7).

e. The commissioner shall monitor the implementation and operation of this section and shall report his findings, including any legislative proposals, to the Senate Labor, Industry and Professions Committee and the Assembly Insurance Committee, or their successors, within three years of the effective date of this act.

N.J.S.A. 17:29D-1. Rules and regulations

The Commissioner of Insurance may adopt, issue and promulgate rules and regulations establishing a plan for

the providing and apportionment of insurance coverage for applicants therefor who are in good faith entitled to, but are unable to procure the same, through ordinary methods. Every insurer admitted to transact and transacting any line, or lines, of insurance in the State of New Jersey shall participate in such plan and provide insurance coverage to the extent required in such rules and regulations.

Any plan established pursuant to this section to provide insurance for automobiles, as defined in section 2 of P.L.1972, c.70 (C.39:6A-2), shall provide:

a. That any automobile liability insurance coverage with limits in excess of $50,000 per person and $100,000 per accident for bodily injury or death and $25,000 for property damage, or in lieu thereof, $100,000 for a single limit of liability against claims for bodily injury or death and property damage, shall be experience rated with respect to the rate applicable to coverage in excess of those limits;

b. That collision and comprehensive automobile insurance coverages on automobiles with a value of $25,000 or more at the time those coverages are issued or renewed shall be experience rated and for automobiles with a value of more than $15,000 but less than $25,000 at the time those coverages are issued or renewed that part of the rate applicable to the value between $15,000 and $25,000 shall be experience rated;

c. For a limited assignment distribution system permitting insurers to enter into agreements with other mutually agreeable insurers or other qualified entities to

transfer their applicants and insureds under such plan to such insurers or other entities;

d. That it shall not provide insurance coverage for more than 10 percent of the aggregate number of private passenger automobile non-fleet exposures being written in the total private passenger automobile insurance market in this State. The plan shall provide for the cessation of the acceptance of applications or the issuance of new policies at any time it reaches 10 percent of marketshare, as certified by the commissioner, until such time that the commissioner certifies that the plan is insuring less than 10 percent of the aggregate number of private passenger automobile non-fleet exposures being written in the total private passenger automobile insurance market in this State;

e. That it shall not provide coverage to an eligible person as defined pursuant to section 25 of P.L.1990, c.8 (C.17:33B-13); and

f. That insurers who write automobile risks in those urban territories designated by the commissioner shall receive one assigned risk credit for every two voluntary risks written in those designated territories.

Prior to the adoption or amendment of such rules and regulations, the commissioner shall consult with such members of the insurance industry as he deems appropriate. Such consultation shall be in addition to any otherwise required public hearing or notice with regard to the adoption or amendment of rules and regulations.

N.J.S.A. 17:30E-2. Purpose of act

The purpose of this act is to assure to the New Jersey insurance consumer full access to automobile insurance through normal market outlets, to encourage the use of available market facilities, to provide automobile insurance for qualified applicants who cannot otherwise obtain such insurance, through a full automobile insurance underwriting association, and to require that companies be made whole for losses in excess of regulated rates on all risks not voluntarily written by providing procedures for the spreading and recoupment of losses based on actual experience.

N.J.S.A. 17:30E-3(o). Definitions

As used in sections 13 to 34 of this act:

* * *

o. "Residual market equalization charge" means the amount imposed pursuant to section 20 of P.L. 1983, c.65 (C.17:30E-8) which, when added to other sources of association income, will cause the association to operate on a no profit, no loss basis.

N.J.S.A. 17:30E-6. Plan of operation

a. Within 90 days after the organizational meeting, unless after the sixtieth day, but not later than the

seventieth day, following the organizational meeting, the commissioner for good cause grants an additional period not to exceed 30 days, the board shall file with the commissioner for his approval a proposed plan of operation, consistent with the provisions of this act, which shall provide for the prompt and efficient provision of automobile insurance to qualified applicants. The plan of operation shall provide for, among other matters, methods and means for the collection, investment and disbursement of funds; methods and standards for the establishment of adequate, actuarially sound reserves for unpaid losses, including provision for incurred but not reported losses; reasonable and adequate commissions to producers; protection of the interests of producers of record without a contractual relationship with a voluntary market member company; procedures and methods for issuing policies on behalf of the association; the method for determining and means of assessing the liability of an insurer which ceases to transact automobile insurance in this State with respect to business transacted prior to the effective date of its termination of membership; minimum requirements for the selection and performance of servicing carriers; minimum requirements for the performance of producers; reasonable and adequate compensation of such servicing carriers; procedures for matching producers with servicing carriers; the methods and procedures for notifying directors of the time and place of board meetings; and the phasing out of the plan for the providing and apportionment of automobile insurance pursuant to section 1 of P.L.1970, c.215 (C.17:29D-1), in a manner which will minimize the shifting of insureds among carriers, except that nothing

herein shall be interpreted to affect the provisions of P.L.1968, c.158 (C.17:29C-6 et seq.).

b. The plan of operation adopted by the board shall be submitted to the commissioner for his review and approval. If the commissioner approves the proposed plan, he shall certify such approval to the directors and said plan shall take effect on the date certified by the commissioner. If the commissioner disapproves all or any part of the proposed plan of operation, he shall return same to the directors with a statement, in writing, of the reasons for his disapproval and any recommendations he may wish to make. The directors may accept the commissioner's recommendations or may propose a new plan, which recommendations or plan shall be submitted to the commissioner within 30 days after the return of a disapproved plan to the directors. If the directors do not submit a proposed plan of operation or if the directors do not submit a new plan which is acceptable to the commissioner, or accept the recommendations of the commissioner within 30 days after the disapproval of a proposed plan, the commissioner shall promulgate a plan of operation and certify same to the directors. Any such plan promulgated by the commissioner shall take effect on the date certified by the commissioner.

c. The directors of the association may amend the plan of operation at any time, subject to approval by the commissioner.

d. The commissioner shall annually review the plan of operation and, not later than April 1, 1985 and not later than April 1 of each year thereafter, shall approve or amend the plan of operation; and any amendments to the

plan adopted by the commissioner pursuant to the annual review shall be binding on the board as of the effective date of the amendments. The commissioner may review the plan of operation at any other time, and may propose amendments to the board. If the board does not adopt amendments acceptable to the commissioner within 30 days, the commissioner may certify amendments and their effective date to the board.

e. Any order of the commissioner with respect to the plan of operation, or any amendment thereto, shall be subject to review by the Appellate Division of the Superior Court.

N.J.S.A. 17:30E-8. Sources of income; claims; filing of experiences; residual market equalization charge; membership in association

a. The association shall derive income from the following sources for the payment of expenses, losses, and the provision of adequate, actuarially sound reserves for unpaid losses and loss adjustment expenses, including incurred but not reported losses, in connection with association business: (1) net premiums earned; (2) income generated from any association accident surcharge system permitted or required by law; (3) that percentage of surcharges collected by the Division of Motor Vehicles prior to October 1, 1991 and deposited with the association pursuant to subsection b. of section 6 of the "New Jersey Automobile Insurance Reform Act of 1982," ~~(P.L.1983, c.65; C.17:29A-35)~~ P.L.1983, c.65 (C.17:29A-35);

(4) income collected by members of the association and by the association from the residual market equalization charge imposed prior to April 1, 1991, or flat charges (also referred to as capitation fees or policy constants, but not including premiums for uninsured motorist or towing coverage, or flattened tax and expense fees implemented pursuant to section 8 of P.L.1983, c.65 (C.17:29A-37)) imposed prior to April 1, 1991, levied on a per car and per coverage basis; ~~and~~ (5) income from investment of moneys collected pursuant to paragraphs (1), (2), (3), ~~and~~ (4) and (6) of this subsection; and (6) income collected by the Director of the Division of Motor Vehicles prior to October 1, 1991, pursuant to section 68 of P.L.1991, c.8 (C.17:33B-63). Residual market equalization charges collected on behalf of the association shall on a monthly basis be certified to by the carrier and shall be transferred to the association in accordance with the plan of operation. No producer commissions or premium taxes shall be paid on, or company expenses or servicing carrier compensation deducted from the residual market equalization charge. No servicing carrier compensation or commissions shall be paid by the association on violation surcharges deposited by the Division of Motor Vehicles with the association. All premiums received by servicing carriers on behalf of the association shall on a monthly basis be certified to by the carrier and shall be transferred to the association in accordance with the plan of operation. Premiums shall be transferred to the association net of commissions paid, all premium taxes, and servicing carrier compensation, except as otherwise required by law.

All claims and claim expense payments paid on association business shall be disbursed by the servicing carriers or the association through drafts drawn on association funds in accordance with the plan of operation. Servicing carriers, as agents of the association, shall have no individual liability on claims or policies written by the association.

b. At least annually, the board shall file its experience with the commissioner, which experience shall include the projected income, expenses, losses and reserve requirements of the association for the ensuing year, any adjustment in previously established reserves for unpaid losses and loss adjustment expenses necessary to make such reserves adequate and actuarially sound, and the initial filing shall include the experience of the automobile insurance plan established pursuant to P.L.1970, c.215 (C.17:29D-1). Except in the case of the initial or other filing applicable to the first year of operation of the association, the board shall include in its filing with the commissioner, for his approval, a computation of the residual market equalization charge per insured vehicle to be collected by each member from its voluntary insureds, exclusive of principal operators 65 years of age or older, and by each servicing carrier from association insureds or insureds covered by the Market Transition Facility created pursuant to section 88 of P.L.1990, c.8 (C.17:33B-11), exclusive of principal operators 65 years of age or older, to offset the anticipated losses of the association.

At the end of the first 12 months of the operation of the association and at least annually thereafter, the board shall also include in its filing with the commissioner a

review of the previous year's experience, setting forth the income, losses, and reserve requirements, including any adjustment in previously established reserves for unpaid losses and loss adjustment expenses necessary to make such reserves adequate and actuarially sound, and expenses of the association during the previous year. ~~If a profit is found by the commissioner to have been realized, such amount shall reduce the residual market equalization charge levied on policyholders pursuant to subsection d, of this section. If a loss is found by the commissioner to have occurred, such amount shall increase the charge levied on policyholders pursuant to subsection d, of this section~~. The filing shall be accompanied by such statistics and other information as the commissioner may deem necessary. The commissioner shall, within 60 days of such filing, approve or disapprove the filing, except that the commissioner may, for good cause, extend by not more than 60 days the period for approving or disapproving the filing. Failure to act within the period allowed for the commissioner's review of the filing shall be deemed approval of the filing, except that the running of the period shall be tolled by a request for additional information by the commissioner or until the association notifies the commissioner that it will not provide such additional information, together with the reason for not supplying the information. Failure to comply with a reasonable request for information may be a ground for disapproving all or part of the filing. If the commissioner disapproves all or part of the filing, he shall state the reasons for such disapproval, and indicate such portion of the filing he approves. Such disapproval

shall be subject to review by the Appellate Division of the Superior Court.

* * *

N.J.S.A. 17:30E-8.1. Plan for payment of obligations if resources insufficient; approval; plan for deferral of payments of property damage claims subject to subrogation

a. Beginning January 1, 1989 and annually thereafter, the commissioner shall determine whether the income of the association as provided for in paragraphs (1), (2), (3), and (5) of section 20 of P.L.1983, c.65 (C.17:30E-8), and the residual market equalization charge levied pursuant to paragraph (4) of that section prior to the effective date of this 1988 amendatory and supplementary act is or will be sufficient to meet its obligations in the ensuing year. If the commissioner determines that the association has insufficient resources to meet its obligations, he shall request the board of the association to formulate a plan for the payment of no less than 50% of the aggregate residual bodily injury losses for which the association is to make payment during the ensuing 12 month period, which plan shall provide for the payment of these losses in no more than four annual installments. The board shall submit the plan to the commissioner for his approval. Interest on the balance of the unpaid claim shall be paid at the rate established by subsection (a) of R.S.31:1-1 for loans in which there is no written contract.

b. In addition to the plan provided for in subsection a. of this section, the commissioner may also request the submission of a plan by the board for the deferral, for a period not to exceed twelve months, of payments by the association of property damage claims which are subject to subrogation.

c. No residual market equalization charge in excess of the charge levied prior to the effective date of this 1988 amendatory and supplementary act shall be approved by the commissioner unless the procedures established pursuant to subsection a. or b. of this section do not provide sufficient revenue for the association to pay its obligations.

N.J.S.A. 17:30E-13. Rates

Notwithstanding the provisions of section 7 of P.L.1983, c.65 (C.17:29A-36), the rates used by the association shall be as follows:

a. On January 1, 1989, the territorial base rates used by the association for policies issued or renewed following that date for qualified applicants or association insureds who, for the three years preceding the date of issuance or renewal, (1) have been convicted of two or more moving violations, or have received four or more motor vehicle points, whichever is less; or (2) have had one or more at-fault accidents shall be adjusted by the commissioner so that they exceed the territorial base rates under the rating plan for standard insureds which is

used by the rating bureau which files rates for the greatest number of insurers transacting private passenger automobile insurance in the voluntary market in this State by 10%. Qualified applicants or association insureds who have not had such accidents or moving violations or motor vehicle points in the three years preceding the issuance or renewal shall be rated under the rating plan for standard insureds which is used by the rating bureau which files rates for the greatest number of insurers transacting private passenger automobile insurance in the voluntary market in this State.

b. On January 1, 1990, the territorial base rates used by the association for policies issued or renewed following that date for qualified applicants or association insureds who, for the three years preceding the date of issuance or renewal, (1) have been convicted of two or more moving violations, or have received four or more motor vehicle points, whichever is less; or (2) have had one or more at-fault accidents shall be adjusted by the commissioner ~~based on the needs of the association pursuant to a filing made with the commissioner by the association no later than October 1, 1989. The commissioner may adjust the association rates~~ so that they exceed the territorial base rates under the rating plan for standard insureds which is used by the rating bureau which files rates for the greatest number of insurers transacting private passenger automobile insurance in the voluntary market in this State by ~~no more than~~ 20%, unless the commissioner reduces the amount of the rate increase based on his certification as to the needs of the association on that date. Qualified applicants or association insureds who have not had such accidents or moving

violations or motor vehicle points in the three years preceding the issuance or renewal shall be rated under the rating plan for standard insureds which is used by the rating bureau which files rates for the greatest number of insurers transacting private passenger automobile insurance in the voluntary market in this State.

c. On January 1, 1991, the territorial base rates used by the association for policies issued or renewed following that date for qualified applicants or association insureds who, for the three years preceding the date of issuance or renewal, (1) have been convicted of two or more moving violations, or have received four or more motor vehicle points, whichever is less; or (2) have had one or more at-fault accidents shall be adjusted by the commissioner ~~based on the needs of the association pursuant to a filing made with the commissioner by the association no later than October 1, 1990. The commissioner may adjust the association rates~~ so that they exceed the territorial base rates under the rating plan for standard insureds which is used by the rating bureau which files rates for the greatest number of insurers transacting private passenger automobile insurance in the voluntary market in this State by ~~no more than~~ 30%, unless the commissioner reduces the amount of the rate increase based on his certification as to the needs of the association on that date. Qualified applicants or association insureds who have not had such accidents or moving violations or motor vehicle points in the three years preceding the issuance or renewal shall be rated under the rating plan for standard insureds which is used by the rating bureau which files rates for the greatest number of

insurers transacting private passenger automobile insurance in the voluntary market in this State.

d. On January 1, 1992, the territorial base rates used by the association for policies issued or renewed following that date for qualified applicants or association insureds who, for the three years preceding the date of issuance or renewal, (1) have been convicted of two or more moving violations, or have received four or more motor vehicle points, whichever is less; or (2) have had one or more at-fault accidents shall be adjusted by the commissioner ~~based on the needs of the association pursuant to a filing made with the commissioner by the association no later than October 1, 1991. The commissioner may adjust the association rates~~ so that they exceed the territorial base rates under the rating plan for standard insureds which is used by the rating bureau which files rates for the greatest number of insurers transacting private passenger automobile insurance in the voluntary market in this State by ~~no more than~~ 40%, unless the commissioner reduces the amount of the rate increase based on his certification as to the needs of the association on that date. Qualified applicants or association insureds who have not had such accidents or moving violations or motor vehicle points in the three years preceding the issuance or renewal shall be rated under the rating plan for standard insureds which is used by the rating bureau which files rates for the greatest number of insurers transacting private passenger automobile insurance in the voluntary market in this State.

e. On January 1, 1993, the commissioner shall direct the board to prepare, adopt and file with the commissioner rates which are based upon past and prospective

loss experience of the risks underwritten by the association and the expenses attendant thereto, and which maintain the association on a self-sustaining basis. The commissioner shall approve or disapprove the rates filed by the board pursuant to the provisions of P.L.1944, c.27 (C.17:29A-1 et seq.).

Nothing contained in this subsection shall be deemed to affect the commissioner's ability to continue to maintain any flat charges (also known as flat capitation fees or policy constants) pursuant to section 1 of P.L.1984, c.1 (C.17:29A-37.1) or any residual market equalization charge pursuant to section 20 of P.L.1983, c.65 (C.17:30E-8) approved on or before 48 months following the effective date of this 1988 amendatory and supplementary act.

f. Nothing contained in subsections a. through e. of this section shall operate to cause the rates charged by the association to result in revenues to the association which exceed the needs of the association in meeting its obligations and expenses.

g. The commissioner may order the adjustment of association rates in any territory in which the relationship between the rates used by the association and the rates used by insurers in the standard voluntary market is such that the voluntary market is adversely affected.

h. The commissioner may order the establishment of association rates which are higher than the rates which are otherwise provided for by this section, which rates would be applicable to certain drivers, based on their accident or violation records. The rates applicable to these drivers shall be established additively to the rates

otherwise authorized for the use of the association, shall be spread equably across all classes and territories and may, at the discretion of the commissioner, vary as to the extent of the at-fault accident or violation records of the drivers.

N.J.S.A. 39:6A-2. Definitions

As used in this act:

a. "Automobile" means a private passenger automobile of a private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; and a motor vehicle with a pickup body, a delivery sedan, a van, or a panel truck or a camper type vehicle used for recreational purposes owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch and otherwise meets the definitions contained in this section, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

b. "Essential services" means those services performed not for income which are ordinarily performed by an individual for the care and maintenance of such individual's family or family household.

c. "Income" means salary, wages, tips, commissions, fees and other earnings derived from work or employment.

d. "Income producer" means a person who, at the time of the accident causing personal injury or death, was in an occupational status, earning or producing income.

e. "Medical expenses" means expenses for medical treatment, surgical treatment, dental treatment, professional nursing services, hospital expenses, rehabilitation services, X-ray and other diagnostic services, prosthetic devices, ambulance services, medication and other reasonable and necessary expenses resulting from the treatment prescribed by persons licensed to practice medicine and surgery pursuant to R.S.45:9-1 et seq., dentistry pursuant to R.S.45:6-1 et seq., psychology pursuant to P.L.1966, c.282 (C.45:14B-1 et seq.) or chiropractic pursuant to P.L.1953, c.233 (C.45:9-41.1 et seq.) or by persons similarly licensed in other states and nations or any nonmedical remedial treatment rendered in accordance with a recognized religious method of healing.

f. "Hospital expenses" means:

(1) The cost of a semiprivate room, based on rates customarily charged by the institution in which the recipient of benefits is confined;

(2) The cost of board, meals and dietary services;

(3) The cost of other hospital services, such as operating room; medicines, drugs, anesthetics; treatments with X-ray, radium and other radioactive substances; laboratory tests, surgical

dressings and supplies; and other medical care and treatment rendered by the hospital;

(4) The cost of treatment by a physiotherapist;

(5) The cost of medical supplies, such as prescribed drugs and medicines; blood and blood plasma; artificial limbs and eyes; surgical dressings, casts, splints, trusses, braces, crutches; rental of wheelchair, hospital bed or iron lung; oxygen and rental of equipment for its administration.

g. "Named insured" means the person or persons identified as the insured in the policy and, if an individual, his or her spouse, if the spouse is named as a resident of the same household, except that if the spouse ceases to be a resident of the household of the named insured, coverage shall be extended to the spouse for the full term of any policy period in effect at the time of the cessation of residency.

h. "Pedestrian" means any person who is not occupying, entering into, or alighting from a vehicle propelled by other than muscular power and designed primarily for use on highways, rails and tracks.

i. "Noneconomic loss" means pain, suffering and inconvenience.

j. "Motor vehicle" means a motor vehicle as defined in R.S.39:1-1, exclusive of an automobile as defined in subsection a. of this section.

N.J.S.A. 39:6A-3. Compulsory automobile insurance coverage; limits

Every owner or registered owner of an automobile registered or principally garaged in this State shall maintain automobile liability insurance coverage, under provisions approved by the Commissioner of Insurance, insuring against loss resulting from liability imposed by law for bodily injury, death and property damage sustained by any person arising out of the ownership, maintenance, operation or use of an automobile wherein such coverage shall be at least in:

a. an amount or limit of $15,000.00, exclusive of interest and costs, on account of injury to, or death of, one person, in any one accident; and

b. an amount or limit, subject to such limit for any one person so injured or killed, of $30,000, exclusive of interest and costs, on account of injury to or death of, more than one person, in any one accident; and

c. an amount of limit of $5,000.00, exclusive of interest and costs, for damage to property in any one accident.

No licensed insurance carrier shall refuse to renew the required coverage stipulated by this act of an eligible person as defined in section 25 of P.L.1990, c.8 (C.17:33B-13) except in accordance with the provisions of section 26 of P.L.1988, c.119 (C.17:29C-7.1) or with the consent of the Commissioner of Insurance.

N.J.S.A. 39:6A-18. Mandatory reduction of bodily injury insurance rates

Bodily injury insurance rates in effect on July 1, 1972 shall be reduced by a least 15% and shall become effective upon the effective date of this act.

New Jersey Administrative Code:

N.J.A.C. 11:3-8.3 Standards of nonrenewal applicable to all automobile policies

(a) An insurer may issue notice of nonrenewal based upon one or more of the following reasons:

1. Accident involvement: The named insured or any operator who customarily operates the automobile has been involved during the 36 months period ended 90 days prior to the expiration of the current policy in:

i. Two or more bodily injury accidents if there is one car in the household or three or more accidents if there are at least two cars in the household, provided a loss payment has been made or a loss reserve has been established for such accidents other than a payment for the personal injury protection benefits; or

ii. Two or more accidents involving damage to any property including his own of $300.00 or more for which accidents a payment was made if there is one car in the household, or three or more such accidents if there are at least two cars in the household, provided that loss payments under the comprehensive physical damage coverage shall not be counted; or

iii. A bodily injury and a physical damage accident as described in i. and ii. above if there is one car in the household. Two bodily injury and one physical damage accident or two physical damage and one bodily injury accident if there are at least two cars in the household.

2. Exceptions: Accidents under i. to iii. above shall not be counted if the accident occurred under the following circumstances:

i. The accident resulted in a claim or payment only under the Personal Injury Protection Coverage;

ii. The automobile was lawfully parked at the time of the accident (an automobile rolling from a parked position shall not be considered as lawfully parked, but shall be considered as in the operation of the last operator);

iii. The named insured or anyone customarily operating the automobile, has been reimbursed by, or on behalf of, a person responsible for the accident or has a judgment against such persons;

iv. The automobile of the named insured or other customary operator was struck in the rear by another vehicle, and the operator has not been convicted of a moving traffic violation in connection with the accident.

v. The operator of another automobile involved in such accident was convicted for a moving traffic violation and the named insured or other customary operator was not convicted of a moving traffic violation in connection therewith;

vi. The automobile operated by the named insured or anyone who customarily operates the automobile is damaged as a result of contact with a "hit and run"

driver, provided that the accident has been reported to legal authorities within a reasonable time thereafter;

vii. The accident resulted from contact with animals or fowl.

3. Convictions concerning motor vehicle law: The named insured or any operator who customarily operates the automobile:

i. Has been convicted, entered a plea of guilty or nolo contendere, forfeited bail bond or other security for any one of the following motor vehicle law violations during the 36 months ended 90 days prior to the expiration date of the current policy:

(1) Driving while intoxicated or under the influence of drugs;

(2) Leaving the scene of an accident;

(3) Criminal negligence or assault arising out of the operation of a motor vehicle;

(4) Driving while license is suspended or revoked.

ii. Has been convicted, entered a plea of guilty or nolo contendere, or forfeited bail bond or other security for other moving traffic violations during the 36 months period ended 90 days prior to the expiration of the current policy which result in the accumulation of an average of nine points or more, as defined in the New Jersey Motor Vehicle Law, per car in the household or which result in an accumulation of nine or more points for any one such operator, provided that any operator who has

been involved in such motor vehicle law violations continues to be an operator or the automobile at the time of renewal.

4. Convictions other than motor vehicle laws: The named insured or anyone customarily operating the automobile is convicted, entered a plea of guilty or nolo contendere, forfeited bail bond or other security for obtaining or attempting to obtain from any other person, insurance company of the Unsatisfied Claim and Judgment Fund any money or any other thing of value by falsely or fraudulently representing that such person is entitled to such consideration under the automobile insurance policy, or falsely or fraudulently making statement or presenting documentation in order to obtain such consideration, or by cooperating, conspiring or otherwise acting in concert with any person seeking to obtain or attempting to obtain falsely or fraudulently such consideration.

5. Use of the automobile in professional racing.

6. Physical or mental impairment of the named insured or anyone customarily operating the automobile which adversely affects the ability to operate the automobile safely, unless a physical disability is compensated for by corrective measures.

i. A nonrenewal premised upon physical or mental impairment must be supported by a current medical examination. The medical examination report must clearly state the nature of the impairment and, in the case of a physical disability, the extent to which such disability adversely affects the ability to safely operate the automobile. In the event such a current medical examination

report is not otherwise available, it must be secured by the insurer at its own expense.

7. Refusal to submit to a medical examination at company expense where there is reason for the company to doubt an operator's ability to operate the automobile safely.

8. Addition of an operator of the automobile during the policy term or for the new policy term with respect to whom any of the above causes for nonrenewal would apply.

9. In the case of companies which limit their writing to members of a church, profession or occupation or similar group, loss of the qualification for such group by the owner of the automobile. In such case an additional 12 months of nonrenewal notice shall be given. The membership of an automobile or travel club does not constitute a qualified group subject to this paragraph.

10. Failure by an insured under the policy to comply with the cooperation or subrogation clause of the policy, subject to reasonable rules established by the Commissioner.

11. Written request by the producer of record not to renew the policy. The producer's request shall include a certification that the policy has been replaced with like coverage at approved rates in the voluntary market with an admitted insurer and shall specify the name of the replacing insurer. The producer's request shall also certify that the insured has been informed in writing of his or her right to renewal and has agreed in writing to the

nonrenewal because the producer has obtained comparable coverage with another insurer. The producer's request not to renew the policy shall be submitted to the insurer not less than 90 days prior to the expiration date of the policy and a copy thereof shall be simultaneously sent by the producer to the named insured.

i. Upon receipt of such request from the producer, the transferor carrier shall advise the insured in writing of his or her right to renewal in the same company before obtaining the insured's consent to transfer and also of the insured's right to renew the policy if he or she is canceled by the new insurer for reasons other than nonpayment of premium or suspension or revocation of the registration or driver's license. Exhibit A appended to this subchapter is approved for this purpose. A nonrenewal based on such request shall be invalid and the original company shall renew the policy at the request of the insured through an active agent and/or broker, or directly if the replacement policy is cancelled by the new carrier for any reason other than the reasons allowed for cancellation by N.J.S.A. 17:29C-7 (nonpayment of premium or suspension or revocation of registration or driver's license).

ii. Failure by a terminated agent to request renewal during the period of nine months from the effective date of termination as provided in N.J.S.A. 17:22-6.14(a) shall be construed as request not to renew in the context of this subchapter. In such event, the insurer shall in writing advise the insured of the status of the agent and that the agent's failure to request renewal denotes that replacement coverage as specified in 11 and 11i above has been obtained. The written notice shall also set forth the insured's right to renewal in the same company as set

forth in 11i. above. Exhibit B appended to this subchapter is approved for this purpose. The insurer's notice shall be sent to the insured not less than 60 days prior to the expiration date of the policy.

iii. Insurance companies and producers shall maintain copies of all correspondence required pursuant to 11, 11i. and 11ii. above for a period of three years.

iv. Notices to insureds set forth in Exhibits A and B shall be sent by certified mail or by regular mail, if at the time of such mailing the insurer has obtained from the Post Office Department a date stamped proof of mailing showing the name and address of the insured. The insurer shall also maintain documentation of the mailing.

(b) An insurer may issue notice of nonrenewal with respect to comprehensive physical damage coverage, including towing and labor coverage, if the insurer, during the 12-month period ended 90 days prior to the expiration of the current policy, has paid under such coverage claims each of which involve a loss payment by the insurer of at least $100.00, as specified in paragraphs 1 and 2 below:

1. Four or more such claims if there is one car in the household or six or more such claims if there are at least two cars in the household.

2. For any policy which covers more than one car, an insurer may nonrenew comprehensive physical damage coverage, including towing and labor coverage for one of the covered cars, if that single car has four or more claims.

(c) An insurer may issue notice of nonrenewal with respect to towing and labor coverage if the insurer, during the 12-month period ended 90 days prior to the expiration of the current policy, has paid claims under such coverage as specified in 1 below:

1. Four or more such claims if there is one car in the household or six or more claims if there are at least two cars in the household.

(d) Except as provided a N.J.A.C. 11:3-8.4, any refusal to renew a policy or coverage, as applicable, which is not based upon the standards set forth in (a) through (c) above shall be submitted to the Commissioner of Insurance for review no later than 120 days prior to the expiration of the policy. The Commissioner shall, in writing, acknowledge receipt of any refusal to renew submitted pursuant to this subsection. The Commissioner shall, within 45 days of receipt, either disapprove or authorize issuance of any nonrenewal submitted by an insurer for review and acknowledged by the Commissioner pursuant to this subsection. If the Commissioner shall fail to either disapprove or authorize issuance of the nonrenewal within such 45-day period, issuance of the nonrenewal shall be deemed to be authorized.

N.J.A.C. 11:3-8.4 Additional nonrenewals based on underwriting guidelines

(a) An insurer may issue notice of nonrenewal based upon a failure to meet current underwriting

standards as specified in such insurer's underwriting guidelines provided that such nonrenewals may be issued only with respect to a policy:

1. Issued by the insurer to any policyholder who was cancelled pursuant to N.J.S.A. 17:29C-7 or non-renewed pursuant to this subchapter; or

2. Issued by the insurer to any policyholder who was last insured through a statutorily mandated residual market insurance mechanism; or

3. Issued by the insurer to any policyholder who is a first-time applicant for automobile coverage.

i. For the purposes of this section, the term "first-time applicant" shall mean a person seeking automobile insurance for the first time, including a child applying for a policy in his or her own name after being on their parent's policy.

(b) Pursuant to the provisions of N.J.S.A. 17:22-6.14a1., an insurer's underwriting guidelines shall not be arbitrary, capricious or unfairly discriminatory.

1. Nonrenewals based upon one or more of the following reasons are specifically prohibited:

i. The race, religion, nationality or ethnic group of an insured;

ii. Solely upon the lawful occupation or profession of an insured, except that this provision shall not apply to any insurer, agent, or broker which limits its market to one lawful occupation or profession, or to several related lawful occupations or professions;

iii. The principal location of the insured motor vehicle, unless such decision is for a business purpose which is not a mere pretext for unfair discrimination. The insurer shall state the business purpose for such nonrenewal and provide the Department with documentation of such purpose on request;

iv. Solely upon the age, sex or marital status of an insured, except that this subparagraph shall not prohibit rating differentials based upon age, sex or marital status;

v. The insured previously obtained insurance coverage through a residual market insurance mechanism;

vi. Another insurer previously declined to insure the insured or terminated an existing policy of the insured.

(c) When policies are written subject to nonrenewal pursuant to this section, the company shall document that the insured is a first time applicant, was cancelled pursuant to N.J.S.A. 17:29C-7 or nonrenewed pursuant to this subchapter or was last insured through a statutorily mandated residual market insurance mechanism. Insurance companies shall maintain copies of such documentation for a period of not less than five years. Such documentation shall be available to the Department on request.

(d) Issuance of a notice of nonrenewal pursuant to this section shall be limited to a period of three years from the date as of which the policy becomes effective after first issuance.

NEW JERSEY
AUTOMOBILE FULL INSURANCE UNDERWRITING ASSOCIATION
PLAN OF OPERATION

February 7, 1984

ARTICLE V

FINANCIAL

* * *

2. The Association shall derive its income from the following sources for the payment of expenses, losses, loss adjustment expenses, and the provision of adequate, actuarially sound reserves for unpaid losses and loss adjustment expenses, including incurred but not reported losses and not reported loss adjustment expenses, in connection with Association business: (1) net premiums earned; (2) income generated from any Association accident surcharge system permitted or required by law; (3) that percentage of surcharges collected by the Division of Motor Vehicles and deposited with the Association pursuant to subsection b. of section 6 of the "New Jersey Automobile Insurance Reform Act of 1982", and that collected and retained by the Association pursuant to subsection c. of said section 6; (4) income collected as the Residual Market Equalization Charge by members of the Association and by the Association; and (5) income from investment of moneys collected.

* * *

OPERATING PRINCIPLES

PART I – GENERAL

Unless specifically identified otherwise, the Sections of these Operating Principles apply to all automobile coverages.

* * *

SECTION 6: ACTUARIAL

A. Reserves – The Board shall appoint an Actuarial Committee which shall recommend the methods and standards for the establishment of adequate, actuarially sound reserves for unpaid losses and loss adjustment expense, including provision for incurred but not reported losses and loss adjustment expenses. Such methods and standards shall be reviewed at least annually by the Actuarial Committee and a report on the results, and any suggested changes or amendments to the methods and standards shall be made to the Board.

B. Report to Commissioner – At least annually, the Board shall file its experience with the Commissioner. This experience shall include the projected income, expenses, losses and reserve requirements of the Association for the ensuing year, any adjustment in previously established reserves for unpaid losses and loss adjustment expenses necessary to make such reserves adequate and actuarially sound, and the initial filing shall include the experience of the automobile insurance plan established pursuant to P.L.1970, c.215 (C.17:29D-1). The Board shall include in its filing with the Commissioner a computation of

the residual market equalization charge (hereafter referred to as "RMEC") per insured vehicle.

The Board shall also include in its filing with the Commissioner a review of the previous year's experience, setting forth the income, losses, loss adjustment expenses, and reserve requirements, including any adjustment in previously established reserves for unpaid losses and loss adjustment expenses necessary to make such reserves adequate and actuarially sound, and expenses of the Association during the previous year. If a profit is found by the Commissioner to have been realized, such amount shall reduce the RMEC levied on policyholders. If a loss is found by the Commissioner to have occurred, such amount shall increase the RMEC levied on policyholders.

Both the filing for the ensuing year and for the previous year shall be in a form established by the Board.

* * *

SECTION 7: COLLECTION AND DISBURSEMENT OF FUNDS

A. Income – The Association shall derive its income from the following sources for the payment of expenses, losses and loss adjustment expenses, and the provision of adequate, actuarially sound reserves for unpaid losses and loss adjustment expenses, including incurred but not reported losses, in connection with Association business:

1. Net premiums earned;

2. Income generated from any Association accident surcharge system permitted or required by laws;

3. That percentage of surcharges collected by the Division of Motor Vehicles and deposited with the Association;

4. Income earned as the RMEC; and

5. Income from investment of moneys collected.

B. Accounts – The Board shall open in the name of the Association such bank account or accounts as it deems necessary.

C. RMEC Collection – Premiums received on voluntary business by member companies as RMEC on behalf of the Association, net of commissions paid shall on a monthly basis be certified to by the member company and shall be transferred to the Association in accordance with the Rules of Practice.

The RMEC shall be collected following the effective date of its approval by the Commissioner, by each member company from its policyholders, exclusive of principal operators 65 years of age or older, on a uniform net direct car year of liability exposure basis and a net direct car year of physical damage exposure basis. Member companies shall, 15 days prior to the date of the implementation of the revised RMEC, make an informational filing with the Commissioner, documenting compliance with the established method of distributing such RMEC.

D. Investments – Investments for the Association shall be managed by an investment committee appointed by the Board. Daily cash flow shall be managed by depository banks under cash management contracts. Standards for investments shall be those applicable to property and casualty insurance companies in New Jersey.

E. Disbursements – Disbursements made on Association business shall be disbursed by the Servicing Carriers or the Association in accordance with the Rules of Practice. Servicing Carriers, as agents of the Association, shall have no liability for claims, or for policies written by the Association.

F. Premium Collection by Servicing Carriers – All premiums (including RMEC) received by Servicing Carriers on behalf of the Association shall be handled in accordance with the Rules of Practice.

G. Servicing Carrier Audits – The books of account of Servicing Carriers as they relate to Association business shall be audited with a frequency and in the manner designated by the Board. The auditors will make their report directly to the Board. Costs for the audit, exclusive of ordinary expenses incurred by the Servicing Carriers to support the audit, will be borne by the Association.

* * *